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IN THE

Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION, *et al.*,
Appellants,

v.

FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

On Appeal from the United States District Court for the District of Columbia

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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Congress restricted corporate and union "electioneering communications" about candidates in Title II of the Bipartisan Campaign Reform Act of 2002 ("BCRA") in order to serve a compelling governmental purpose, as required by the First Amendment to the United States Constitution.

2. Whether Congress, in regulating identical speech differently depending upon the medium through which it travels and the speaker that utters it, adequately tailored the definitions of "electioneering communications" in Section 201 of BCRA to serve the anti-corruption purpose proffered in support of those definitions.

3. Whether Congress adopted the least restrictive means of regulating political speech by flatly prohibiting "electioneering communications" by both nonprofit 501(c)(4) corporations and for-profit corporations alike in Section 204 of BCRA, rather than permitting 501(c)(4) corporations to fund such communications exclusively with individual contributions, as was initially contemplated by BCRA.

4. Whether the alternative "fallback" definition of "electioneering communications" in Section 201 of BCRA, as originally worded or as now construed by the district court below to prohibit, without temporal or other qualification, any broadcast communication that "promotes or supports a candidate . . . for office, or attacks of opposes a candidate for . . . office," comports with the First Amendment.

5. Whether Congress violated the Equal Protection guarantee of the Fifth Amendment by granting a special exemption in § 201 of BCRA for political speech by

corporations that own broadcast facilities, as opposed to all other corporations whose identical speech constitutes forbidden "electioneering communications."

PARTIES TO THE PROCEEDINGS

Appellants, plaintiffs in the court below, are the National Rifle Association ("NRA") and the National Rifle Association Political Victory Fund ("PVF"), a Political Action Committee ("PAC") of the NRA.

Appellees, defendants or intervenor-defendants below, are the Federal Election Commission and its Commissioners; the Federal Communications Commission; the United States of America; Senator John McCain; Senator Russell Feingold; Representative Christopher Shays; Representative Martin Meehan; Senator Olympia Snowe; and Senator James Jeffords.

STATEMENT PURSUANT TO RULE 29.6

Neither appellant has a parent corporation, and no publicly held company owns 10% or more of the stock of either appellant.

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INTRODUCTION

Circuit Judge Karen LeCraft Henderson put it well in writing that BCRA "breaks faith with the fundamental principle — understood by our Nation's Founding Generation, inscribed in the First Amendment and repeatedly affirmed by the United States Supreme Court — that 'debate on public issues should be uninhibited, robust and wide open,' " Henderson, J., Mem. Op. 5 (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)). The opinions of her colleagues, however, perversely "leave standing [BCRA's] most pernicious provisions" that strike at the heart of this vital premise. *Id.*

The district court's series of divided opinions somehow find their way to affirming a constitutional right to give and receive unlimited sums of soft money, while denying the right of nonprofit political associations such as the NRA to *speak* on behalf of their individual members -- precisely *inverting* this Court's consistent teachings regarding the greater protections to which independent expenditures are entitled as compared to contributions under the First Amendment.[1] The district court upheld BCRA's ban on the expenditure on political speech of individual $30 contributions that the NRA pools from its members, even as the court affirmed the statute's exemption for the expenditure on political speech of vast corporate resources by massive media conglomerates. And, after striking BCRA's primary definition of "electioneering communications" as overbroad, the district court effectively rewrote the fallback definition such that it now reaches any broadcast reference to any candidate for federal office -- at any time -- "that . . . is *not* neutral as to [the] candidate[ ]." Leon, J., Mem. Op. 92. Offering cold comfort for the resulting "chilling effect," the court has instructed that entities such as the NRA "can avoid regulation simply by not mentioning a candidate for federal office" or else "seek[ing] an advisory opinion from the FEC to determine whether a communication is regulated." *Id.* at 95. So, in order to avoid criminal punishment for engaging in political speech, groups like the NRA must now either censor themselves to avoid referencing candidates or else submit the script of their political speech to government bureaucrats for preclearance.

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[1] *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 44 (1976); *California Medical Ass'n v. FEC*, 453 U.S. 182, 197-99 n.17 (1981); *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 617 (1996).

BCRA's regime, both in its original form and as it exists in the wake of the district court's decision, is anathema to the First Amendment and ruinous of political speech in this country. Review by this Court is imperative. Appellants urge the Court to note probable jurisdiction on the questions presented herein, and to reverse the district court on each of these questions.

OPINIONS BELOW

The three-judge district court issued four opinions: a per curiam and an individual opinion by each judge. None of the opinions is reported. *See* Appendix ("App.") 4a. Appellants' notice of appeal is reprinted at App. 1a.

JURISDICTION

The district court entered judgment on May 2, 2003. Appellants filed their timely notice of appeal on May 5, 2003. This Court has appellate jurisdiction under Section 403(a)(3) of BCRA.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Bipartisan Campaign Reform Act ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, is reprinted at App. 7a.

The First Amendment to the United States Constitution is reprinted at App. 5a.

The Fifth Amendment to the United States Constitution is reprinted at App. 6a.

STATEMENT OF THE CASE

1. Title II of BCRA criminalizes the funding of any "electioneering communication" from corporate or union general treasury funds.[2] *See* Section 203 (prohibiting corporate and union "electioneering communications"); Section 312 (authorizing imprisonment of up to five years for a violation). Under Title II's primary definition of "electioneering communications," corporations and unions cannot fund

> any broadcast, cable, or satellite communication which—
>
> (I) refers to a clearly identified candidate for Federal office;
>
> (II) is made within . . . 60 days before a general, special, or runoff election for the office sought by the candidate[,] or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
>
> (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

See Section 201(revising 2 U.S.C. § 434(f)). Congress also included a back-up definition of "electioneering communication," however, to take effect if its primary definition is struck down as "constitutionally insufficient." *Id.* According to the fallback definition, "electioneering communication" means "any broadcast, cable, or satellite communication which promotes or supports a candidate for [Federal] office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." *Id.* Thus, in contrast to the primary definition's approach, the fallback definition specifies no temporal or targeting limitations on its scope, but limits its prohibition to speech that has "no plausible meaning" apart from electioneering.

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[2] In addition, BCRA imposes disclosure obligations upon persons who fund "electioneering communications." *See* Section 201.

Both definitions of "electioneering communication" include a special media exemption. They do not reach "a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." *Id.* Accordingly, corporations that own "the facilities of any broadcasting station" remain free to carry electioneering communications in the form of news stories, commentaries, or editorials. *See* Henderson, J., Mem. Op. 222.

Title II of BCRA contains a provision (Section 203, the so-called "Snowe-Jeffords provision") exempting the "electioneering communications" of 501(c)(4) corporations to the extent they are funded from a segregated fund to which only individuals may contribute. Anomalously, another provision of Title II (Section 204, the so-called "Wellstone Amendment") entirely negates this exemption. The district court's per curiam opinion explains how the relevant provisions interact to achieve this result:

> The Snowe-Jeffords Provision [in Section 203] permits nonprofit organizations to use their general treasury funds to pay for electioneering communications if they are incorporated under

Section 501(c)(4) and/or Section 527(e)(1) of the Internal Revenue Code . . . .

While a nonprofit corporation under Snowe-Jeffords is permitted to use general treasury funds for electioneering communications, . . . these corporations are not permitted to use funds donated by a corporation, labor union, or national bank to purchase them. Under Snowe-Jeffords, a nonprofit corporation may only use funds donated by individuals to pay for electioneering communications. If a nonprofit corporation, for example, has accepted corporate contributions and mixed those contributions with general treasury funds that contained individual donations, the nonprofit corporation would not be permitted to use their [sic] general treasury funds to engage in electioneering communications.

. . . .

Despite drafting and including the Snowe-Jeffords provision in the Act, an amendment offered by Senator Paul Wellstone and adopted by the Senate effectively eviscerates the Snowe-Jeffords Provision from the Act . . . . The direct consequence of the Wellstone Amendment is that organizations organized under Section 501(c)(4) and Section 527(e)(1) of the Internal Revenue Code, or those entities who have received funds from corporations, are not permitted to use their general treasury funds for electioneering communications.

The Wellstone Amendment was codified in a separate section of BCRA in order to preserve severability: hence, if the Court finds the inclusion of Section 501(c)(4) organizations and Section 527

> within the ban on electioneering communications to be unconstitutional, the Wellstone Amendment can be cleanly struck from the law and the original Snowe-Jeffords exception for these groups will be restored. *See* BCRA Section 401 (discussing that BCRA is subject to severability).

Per Curiam Op. 67-70.[3] The NRA is one such 501(c)(4) corporation that, under Snowe-Jeffords, could have pooled donations from millions of individual members into a powerful, collective voice expressing their shared political message, but whose "electioneering communications" will now be silenced, on pain of imprisonment, by the Wellstone Amendment as upheld by the district court.

2. The National Rifle Association "is a tax-exempt corporation governed by 501(c)(4) of the Internal Revenue Code and incorporated in the State of New York." Per Curiam Op. 85, ¶ 13. Its four million members are individual Americans bound together by a common desire to advance its defining mission: the preservation of the Second Amendment right to "keep and bear arms." *Id.*; *see* Henderson, J., Mem. Op. 67, ¶ 2. Most of these members "are individuals of modest means," Henderson, J., Mem. Op. 110-11, ¶ 51(f)-(g); "the average NRA donor donates approximately $30 per year." Per Curiam Op. 96, ¶ 41. The NRA uses these donations to represent the views of its membership "on legislative and public policy issues before federal, state and local officials and

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[3] *See also* Henderson, J., Mem. Op. 37 ("section 204 — referred to by the parties as the "Wellstone Amendment — eliminates the section 203(b) exception"); Kollar-Kotelly, J., Mem. Op. 455 ("With the Snowe-Jeffords' provision, BCRA appeared to provide for an exception to the electioneering communication ban for certain types of corporations; however, this exception has been eliminated by the 'Wellstone Amendment.' "); Leon, J., Mem. Op. 97 ("What Section 203 provides, however, Section 204 takes away.").

the general public." Per Curiam Op. 85, ¶ 13; Henderson, J., Mem. Op. 67, ¶ 2. In addition, the NRA sponsors activities, such as firearm-safety training and shooting competitions, that promote the enjoyment of the very Second Amendment freedoms it seeks to preserve. *See* Per Curiam Op. 85, ¶ 13.

The NRA Political Victory Fund (the "PVF") is a political committee within the meaning of 2 U.S.C. § 431(4) and is a separate segregated fund of the NRA. *Id.* at 85, ¶ 14; Henderson, J., Mem. Op. 67, ¶ 3.

The NRA, in the course of defending the constitutional rights of its members, constantly engages in political speech on issues of vital importance to its mission. It does so as part of a robust, ongoing, and consistently heated debate that roils in this country over the meaning of the Second Amendment and the protections to which gun owners are constitutionally entitled. The NRA's frequent references to candidates for federal office are an integral part of its contribution to this debate; wholly apart from influencing elections, these references enable it to respond to pointed attacks that candidates themselves frequently direct against it, to educate the general public about the Second Amendment and those who would threaten it, and to raise funds from Americans who are favorably disposed to its cause. *See* Henderson, J., Mem. Op. 107-10, ¶ 51; Kollar-Kotelly, J., Mem. Op. 324 & nn.103-04.

In defense of its First Amendment rights to engage in such political speech, the NRA initiated this action on March 27, 2002 -- the very morning on which BCRA was signed into law -- seeking to enjoin Title II's criminalization of "electioneering communications." In light of the diverging, and indeed conflicting, interests of the plaintiffs challenging Title II, the NRA subsequently agreed to consolidation of its challenge with those of its fellow plaintiffs only upon receiving an explicit assurance from the district court that it would be permitted to file its own brief and to present oral argument.

3. Although distilling the three-judge district court's holdings from its four separate opinions is not easy, the court's holding with respect to the constitutionality of Title II's definition of electioneering communication is controlled largely by the memorandum opinion of Judge Leon: Judge Leon joins Judge Henderson in striking the primary definition of "electioneering communication" because of its overbreadth; he then upholds the fallback definition, joined by Judge Kollar-Kotelly, adopting a saving construction striking the "final clause" that would otherwise render it "unconstitutionally vague." Leon, J., Mem. Op. 93.

The district court's per curiam opinion, which Judge Henderson does not join, *see* Per Curiam 4 n.1, does not treat with Congress' definition and prohibition of "electioneering communications" in Title II of BCRA.[4] It does, however, make plain the deep fissures that weave throughout the "separate opinions by the members of this three-judge panel" such that "not any one opinion is fully dispositive." *Id.* at 171. Indeed, all four opinions present hundreds of pages of separate though often repetitive findings of fact. *See* Leon, J., Mem. Op. 65, 115 ("Despite our best efforts to produce a complete set of Findings of Fact, in which two or more members of this Court concur, we were unable to do so.").[5]

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[4] The Court's per curiam opinion is written by Judges Kollar-Kotelly and Leon and, besides summarizing the Court's overall holding and offering some background discussion, speaks only to discrete aspects of this case. *See* Per Curiam 5. After offering, in Part I, a helpful summary of the Court's ultimate holdings with respect to the various provisions of BCRA that are at issue, *see id.* at 5-15, Part II of the opinion: (a) "canvass[es] the history of campaign finance regulation," *id.* at 15-42; (b) traces the legislative history of BCRA, *see id.* at 42-50; (c) describe the procedural history of this litigation, *see id.* at 50-57; and (d) outlines various provisions of Titles I through V of BCRA. *See id.* at 57-80. Thereafter, Part III of the opinion offers findings of fact that describe "the identities of the parties" and generally relate to BCRA's disclosure provisions. *Id.* at 80-106, ¶¶ 1-52. Part IV of the opinion contains its conclusions of law, which (a) address and reject the Paul plaintiffs' unique arguments that BCRA violates freedom of the press, *see id.* at 106-13; and then (b) address plaintiffs' collective arguments that various disclosure and coordination provisions of BCRA are unconstitutional, upholding all of the provisions against challenge -- or rejecting challenges to them as nonjusticiable -- except for the requirement of Section 201 that a contract for an "electioneering communication" be

Judge Henderson would have struck Congress' attempt to regulate "electioneering communications" under Title II on numerous, independent grounds. First, Judge Henderson concluded that Congress' restriction of "electioneering communications," under either of Section 201's definitions, would unconstitutionally reach beyond this Court's definition of express advocacy in *Buckley v. Valeo*, 424 U.S. 1 (1976). Henderson, J., Mem. Op. 204-19. Second, Judge Henderson held in the alternative that Congress' ban on "electioneering

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disclosed before it is run. *See id.* at 113-70. The opinion concludes with a short Part V, explaining that the three memorandum opinions of the respective judges are arranged "in order of seniority" and clarifying "that not any one opinion is fully dispositive." *Id.* at 170-71.

[5] *See also* Henderson, J., Mem. Op. 65 n.55 ("To be clear, I do not join the *per curiam* statement of facts, nor do I join the factual findings set forth in the other opinions."); Kollar-Kotelly, J., Mem. Op. 16 ("though . . . I am in dissent on most of Title I, as well as in dissent with regard to the primary definition of electioneering communication in Title II, I have found it appropriate to adequately set forth the bases of my Factual Findings to assist the appellate review of the three-judge District Court's decisions"); Leon, J., Mem. Op. 115-16 ("I believe it is necessary to set out, for the most part, those facts which in my judgment are sufficiently relevant and probative to rely upon in reaching my conclusions. Accordingly, while there may be other relevant and probative facts in the record, I do not accord them sufficient weight to warrant either relying on them in my judgments, or including them in my Findings.").

communications" in Section 203 could not survive the strict scrutiny required by the First Amendment because it does not " 'alleviate the [alleged] harms *in a direct and material way*' ";[6] in failing to regulate identical electioneering content carried by newspapers, direct mail, the Internet, or even that broadcast by media corporations, the statute's "underbreadth 'diminish[es] the credibility of the government's rationale for restricting speech in the first place.' "[7] *See id.* at 219-23. Finally, Judge Henderson explained that, even if Title II "served the government's interest in preventing . . . actual or apparent corruption,"[8] it is not narrowly tailored to do so: It both sweeps in the wrong speech, regulating ads designed to influence legislative outcomes as well as electoral ones, and the wrong speakers, forbidding (via the Wellstone Amendment in Section 204) nonprofit voluntary political associations "from the ACLU to the NRA to MCFL itself" from funding electioneering contributions, notwithstanding their use of individual as opposed to corporate contributions.[9] *See id.* at 224-27.

Judge Kollar-Kotelly, in contrast, would have upheld virtually all of Title II,[10] including its primary definition of "electioneering communications." Applying strict scrutiny,

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[6] *Id.* at 220 (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 662, 664 (1994)).

[7] *Id.* at 223 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994)).

[8] *Id.* at 224.

[9] *Id.* at 226

[10] The exceptions are the prior disclosure requirement of Section 201, which Judges Kollar-Kotelly and Leon struck down in the per curiam opinion, *see* Per Curiam 121-24, and Section 213, forcing political parties to choose between making either coordinated expenditures or unlimited independent expenditures on behalf of candidates. *See* Kollar-Kotelly, J., Mem. Op. 744; Leon, J., Mem. Op. 99-106.

Judge Kollar-Kotelly found this the "rare" case in "which a content-based restriction on speech" should be upheld. Kollar-Kotelly, J., Mem. Op. 475. Specifically, she concluded (1) that the record demonstrated a compelling interest in combating both corruption and the appearance of corruption associated with "sham" issue ads funded by corporations and unions; (2) that *Buckley* did not limit Congress to regulating only express advocacy; and (3) that Title II's regulation of particular speech, media, and speakers was narrowly tailored to serve its purpose. *See id.* at 356-476. Judge Kollar-Kotelly nonetheless acknowledged that her upholding of BCRA's primary definition of "electioneering communication" departed from "the majority who have found the primary definition unconstitutional." *Id.* at 357. And despite repeatedly voicing concerns about the inherent subjectivity of determining whether particular issue ads are "genuine" as opposed to "sham,"[11] Judge Kollar-Kotelly joined Judge Leon in upholding the fallback definition of "electioneering communications," *see id.* at 357, 476, which turns entirely upon whether a particular ad is understood to "promote[ ] or support[ ] . . . or attack[ ] or oppose[ ]" a candidate.[12]

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[11] *See, e.g.*, *id.* at 431 ("By constructing [the primary definition's] bright-line test, and avoiding a test that rests on subjectivity, Congress . . . avoided the vagueness problems that plagued FECA"); *id.* at 443 ("[T]he problem with this approach is that it asks the Court to sit as the viewer and find that these advertisements were pure issue advertisements. The *Buckley* Court warned against a statutory test that relied on the viewer and listener's interpretation of the political message."); *id.* at 446-47 ("The expert testimony in this case demonstrates the subjective nature of the effort of trying to capture mental impressions of viewers, and illustrates how one person's genuine issue advertisement can be another's electioneering communication.").

[12] *See* Section 201; Leon, J., Mem. Op. 92-93, 80 ("the backup definition . . . depend[s] on the effect of the communication's message on a candidate's election").

Judge Leon cast the decisive vote in both striking down Title II's primary definition of "electioneering communications" and upholding its fallback definition. In Judge Leon's view, the primary definition is unconstitutionally overbroad because "the periods preceding elections are the most effective times to run issue advertisements discussing pending legislation,"[13] and "there are many reasons why it is helpful, if not necessary, to mention a candidate's name in these advertisements in order to focus the public's attention on a particular piece of pending legislation."[14] The primary definition would ban issue and electioneering ads alike and therefore was unconstitutional on its face: "[T]he realistic danger that the primary definition of electioneering communications will significantly compromise genuine issue advocacy necessitates such a finding."[15] *See id.* at 74-86.

Judge Leon had no such problem with the fallback definition, however. And although he concluded "that the backup definition's final clause, which requires the message to be 'suggestive of no plausible meaning other than an exhortation to vote,' is unconstitutionally vague,"[16] Judge Leon thought the definition susceptible to a saving construction simply deleting its final clause. *See id.* at 90-95. Under the modified definition, "one need only conclude, in effect, that [an] ad is *not* neutral as to both candidates for it to have satisfied the backup definition, and [it] thereby . . . satisfie[s] the objective First Amendment standard that a reasonable person considering the context and nature of the expression at issue is able to evaluate the speech."[17] According to Judge Leon, any would-be speaker who might be chilled by doubts about the "neutrality" of a particular reference to a candidate could "avoid regulation simply by not mentioning a candidate for federal office in its ad" or seek "an advisory opinion from the FEC" prior to running it.[18]

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[13] Leon, J., Mem. Op. 76.

[14] *Id.* at 77.

[15] *Id.* at 86.

[16] *Id.* at 93.

With respect to the purpose and tailoring of Title II's regulation of "electioneering communications," Judge Leon ultimately concluded that they satisfy strict scrutiny. He therefore upheld the ban on "electioneering communications" (as defined in the modified fallback definition) funded from corporate and union treasury funds. *Id.* at 87-90, 96-98.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

> "[A] representative democracy ceases to exist the moment that the public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it."

New York Times Co. v. Sullivan, 376 U.S. 254, 297 (1964) (quoting 1 ST. GEORGE TUCKER, BLACKSTONE'S COMMENTARIES (1803), 297 (editor's appendix)) (Black, J., joined by Douglas, J., concurring). If there is truth in this proposition, then Title II of BCRA cannot stand, for it restrains, on pain of criminal sanction, the airing of broadcast ads "speaking, writing, or publishing . . . opinions . . . upon the conduct of those who may advise or execute" public measures.

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[17] *Id.* at 92.

[18] *Id.* at 95.

It is, after all, "*electioneering communications*" that BCRA in terms restricts the NRA and similar issue advocacy organizations from broadcasting during an election campaign.

The speech-suppressing purpose of Title II of BCRA is plain from the face and operation of the statute itself. And its true purpose was candidly proclaimed, by those who urged BCRA's passage in Congress: "[Title II] is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airways." 148 CONG. REC. S2096, S2117 (daily ed. Mar. 20, 2002)(statement of Sen. Cantwell). *That* is Title II's true purpose, and that, accordingly, is its epitaph.

I. TITLE II'S OPERATION AND LEGISLATIVE RECORD REVEAL ITS SPEECH-SUPPRESSING PURPOSE.

Title II restricts speech based upon its content. Appellees therefore concede that they must prove that the measure advances a compelling governmental purpose in the least restrictive manner. Opening Government Brief at 133-34. Appellees also assert that Title II's "compelling governmental purpose" was the same one relied upon by the State of Michigan in *Austin* -- "to ensure that [political] spending 'reflect[s] actual support for the political ideas espoused by corporations' and unions, rather than their success in the economic marketplace." Government Brief in Opposition at 55 (quoting *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 660 (1990)). But this is belied both by Title II's operation and by the legislative record.

Targeted by its terms specifically at broadcast ads referring to a federal candidate during an election campaign, Title II's speech-suppressing purpose is plain on its face: to suppress to the maximum possible extent the specific political speech by "outside interest groups" -- "negative attack ads" --

that BCRA's proponents openly and uniformly decried. The sponsors of Title II were candid about their goal of suppressing such "negative attacks ads" and "sham issue ads," both in the legislative record and in their sworn depositions in this case. *See, e.g.*, 145 CONG. REC. S12,575, S12,606-07 (daily ed. Oct. 14, 1999) (statement of Sen. Wellstone) ("I think these issue advocacy ads are a nightmare. I think all of us should hate them. . . . We could get some of this poison politics off television."); 148 CONG. REC. at S2117 (statement of Sen. Cantwell) ("[Title II] is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airwaves."); 147 CONG. REC. S3084, S3115-16 (daily ed. Mar. 21, 2001)(statement of Sen. McCain) (Issue ads have "demeaned and degraded all of us because people don't think very much of you when they see the kinds of attack ads that are broadcast on a routine basis."). If "strict scrutiny" means anything, it surely must mean that the "compelling governmental interest" necessary to justify a content-based speech restriction must be the purpose that *actually* motivated Congress when it passed the law in question. *See, e.g., Thompson v. Western States Med. Ctr.*, 535 U.S. 357 (2002).

Far from preventing *Austin*-type corruption, BCRA perversely ensures that the power of the NRA's political voice will be *artificially deflated* vastly below its "contributors' support for the corporation's political views." *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652, 660-61 (1990). Title II channels the NRA's "electioneering communications" through its PAC, the PVF, which receives a pittance compared to the NRA's revenue from individual contributions, for few NRA members can afford to pay twice -- first, to satisfy the NRA's membership fee and, second, to donate specifically to PVF -- as would be required for their dollars actually to flow to PVF. 11 C.F.R. § 114.7; 11 C.F.R.

§ 114.1. *See* Henderson, J., Mem. Op. 110, ¶ 51.g.1. This congressional attempt at speech suppression for its own sake is antithetical to the First Amendment.

II. THE GOVERNMENT HAS FAILED TO PROVE THAT THERE IS NO LESS RESTRICTIVE ALTERNATIVE TO TITLE II.

Even if the Government could establish that preventing *Austin*-type corruption truly was Congress's purpose in stifling the "electioneering communications" of grassroots issue advocacy groups like the NRA, Title II would nevertheless have to be struck down. The First Amendment "imposes an especially heavy burden on the Government to explain why a less restrictive provision would not be as effective," *Reno v. ACLU,* 521 U.S. 844, 879 (1997), and here appellees are at a complete loss.

In its original form, as proposed by Senators Snowe and Jeffords, Title II of BCRA allowed 501(c)(4) nonprofit organizations and 527 "political organizations" to spend general treasury funds for electioneering communications so long as those funds were derived from contributions by individuals rather than corporations. *See* Section 203(b) ("the Snowe-Jeffords provision"). But Senator Wellstone's amendment to Title II added Section 204 ("the Wellstone Amendment"), which "effectively eviscerates" the Snowe-Jeffords exception. Per Curiam Op. 69.

This Court need look no further than the original Snowe-Jeffords provision for a less restrictive alternative to Title II for ensuring that business profits do not spill over into the political marketplace. That provision is a complete answer to the problem identified in *Austin* and supposedly addressed by Title II: that corporations distort the political process when they speak with the support of "market profits," Intervenors' Brief in Opp. at I-57, which "have little or no correlation to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660-61. Plainly, individual contributions to a grassroots issue-advocacy organization from its members closely "correlate" with the public's support for its views.

The acknowledged purpose of the Wellstone Amendment further demonstrates its invalidity. Appellees maintained below that the amendment aims to "prevent large soft-money donations from individuals . . . from being passed through nonprofit corporations to purchase electioneering ads." Government Reply Brief at 58. Of course, this rationale has nothing to do with *Austin*-style corruption, the only governmental interest that has ever been found by this Court sufficiently compelling to stifle political speech.

As noted above, the Wellstone Amendment took the unusual form of a separate section nullifying but not deleting the Snowe-Jeffords provisions precisely so that it could be severed without dooming the rest of Title II. The principal sponsors of Title II were openly concerned that the Wellstone Amendment would be held unconstitutional, and they insisted on coupling it with an express severability provision.[19] If the Wellstone Amendment is enjoined, therefore, grassroots political advocacy organizations like the NRA will have regained their right to participate in the Nation's political discourse, while other major sponsors of issue ads, such as the Chamber of Commerce (a 501(c)(6) organization) and the

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[19] *See, e.g.*, 147 CONG. REC. S3070, S3073 (daily ed. Mar. 29, 2001) (statement of Sen. Feingold) ("I thought and still think that [the Wellstone Amendment] makes Snowe-Jeffords more susceptible to a constitutional challenge, but it passed when many Senators who oppose the bill voted for it. In any event, the Wellstone Amendment was written to be severable from the remainder of the Snowe-Jeffords provision. That gives even more significance to the vote we will have today on severability. But if we win that vote, Snowe-Jeffords will survive even if the Wellstone Amendment is held to be unconstitutional.").

AFL-CIO, will still remain subject to Title II's restrictions. Notably, the NRA was the sole plaintiff in the court below to challenge the Wellstone Amendment on the grounds set forth above. Only Judge Henderson recognized this inconsistency between the Wellstone Amendment and the requirement of narrow tailoring. *See* Henderson, J., Mem. Op. 225-27.

III. BCRA IS AN ARBITRARY PENAL CODE FOR POLITICAL SPEECH THAT IS BOTH OVERBROAD AND UNDERINCLUSIVE.

To sustain BCRA's ban on "electioneering communications," the Government "must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (internal quotations and citations omitted). BCRA's alleged statutory "purpose is belied . . . by the provisions of the statute, which are both underinclusive and overinclusive." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 793 (1978). Title II's patchwork of confusing and contradictory restrictions constitutes an arbitrary speech code that is not narrowly tailored to advance a legitimate, let alone a compelling, governmental purpose.

A. BCRA Is Fatally Overbroad.

BCRA's prohibition on electioneering communications is fatally overbroad both because it silences *speakers* that pose no threat of the harms allegedly sought to be prevented and because it criminalizes *categories of speech* that are wholly divorced from the statute's purposes. "The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255

(2002). *Ashcroft* struck down the Child Pornography Prevention Act as overbroad on the basis of *hypothesized* applications of the law. *See id.* at 259; *id.* at 273 (Rehnquist, C.J., dissenting). Here, by contrast, there is *compelling evidence* that the NRA and other nonprofit advocacy organizations engage in conduct that does not implicate the statute's purpose, and in speech that falls outside the ambit of the restriction's purported rationale.

1. BCRA Criminalizes the Speech of Organizations That Pose No Threat of Corrupting The Political Process.

This Court has repeatedly held that core political speech is protected by the First Amendment even when corporations are the speakers. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 45, 50, 187 (1976); *Bellotti*, 435 U.S. at 777; *Federal Election Comm'n v. MCFL*, 479 U.S. 238, 259 (1986). Indeed, in *Massachusetts Citizens for Life*, the Court upheld a nonprofit voluntary membership corporation's First Amendment right to make unlimited independent expenditures to fund its political speech, including express advocacy. Only once — in *Austin* -- has this Court upheld an independent expenditure restriction on core political speech. And, the specific danger identified in *Austin* -- corruption of the political process through the aggregation of wealth generated by business corporations -- has no application to nonprofit membership organizations that are devoted to the advancement of specific rights and ideas and are funded almost exclusively by the dues and donations of individual members. Title II of BCRA must therefore be struck down.

In *MCFL,* 479 U.S. 238 (1986), this Court held that a voluntary membership organization committed to a political purpose does not lose its First Amendment rights simply by taking the corporate form:

> The resources in the treasury of a *business corporation* . . . are not an indication of popular support for the corporation's political ideas. . . .
>
> . . . .
>
> . . . Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed *to disseminate political ideas, not amass capital.* The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace.

479 U.S. at 258-59 (emphasis added). The *Austin* Court, in contrast, upheld a state law restricting expenditures on express advocacy by the Michigan Chamber of Commerce because 75 percent of the Chamber's funding came from for-profit corporate members and, thus, "resources amassed in the economic marketplace" could have been used by the Chamber "to provide an unfair advantage in the political marketplace." *MCFL*, 479 U.S. at 257. The "corrosive and distorting effects" of the Chamber's corporate wealth had "*little or no correlation* to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660 (emphasis added).

MCFL and *Austin* thus draw a line between advocacy organizations that fund their speech with individual dues and contributions, and business or trade associations that fund their speech largely with contributions from business corporations. The former, unlike the latter, pose no danger of *corrupting* the political process through wealth generated in the economic marketplace.

The NRA is the archetypal issue advocacy group protected by the First Amendment. Like MCFL, it "was formed to disseminate political ideas, not amass capital," District Court NRA Appendix ("NRA App.") 106, and its members are "fully aware of its political purposes." *See* NRA App. 133-56. Thus, the NRA's resources plainly "are not a function of its success in the economic marketplace, but its popularity in the political marketplace." 479 U.S. at 259.[20] The organization serves as a vehicle through which "large numbers of individuals of modest means can join together . . . to '[amplify] the voice of their adherents.' " *Federal Election Comm'n v. NCPAC*, 470 U.S. 480, 494 (1985) (quoting *Buckley*, 424 U.S. at 22) (alteration in original).

> To say that their collective action in pooling their resources to amplify their voices is not entitled to full First Amendment protection would subordinate the voices of those of modest means as opposed to those sufficiently wealthy to be able to buy expensive media ads with their own resources.

NCPAC, 470 U.S. at 495. And the aggregated wealth that the NRA receives in $30 contributions from its members corresponds with its members' support for its political ideas. If the NRA's voice is loud and reverberates through the halls of Congress, it is precisely because the organization is the *collective voice* of millions of Americans speaking in unison. That "is not a *corruption* of the democratic political process; it *is* the democratic political process." *Renne v. Geary*, 501 U.S. 312, 319 (1991) (Marshall, J., dissenting).

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[20] The NRA derives *de minimis income* from business corporations. Although the NRA derives substantial *revenue* from advertising in its magazines and the sale of NRA memorabilia, it *loses* money on these activities. Additionally, the NRA generates about $1.7 million a year in rental income from leasing its building space. Finally, the NRA receives minimal contributions from for-profit businesses.

2. BCRA Criminalizes Speech That Is Not Intended To Influence Elections.

BCRA's restriction on electioneering communications also fails the narrow tailoring standard because it unfairly criminalizes *numerous categories of speech* that are not intended to, and will not have the effect of, influencing federal elections.

The NRA's extensive independent expenditures on television and radio broadcasting are designed to serve three principal purposes: (a) to educate the public about Second Amendment and related firearm issues, including pending legislative initiatives; (b) to defend itself against attacks aired by the broadcast media, including attacks by politicians opposed to the NRA's views on the Second Amendment and related issues; and (c) to recruit members and raise funds. When engaging in such speech, the NRA often makes references to public officials and candidates for federal office. The vast majority of this speech is not intended to influence elections, and BCRA's criminalization of this speech demonstrates the statute's dramatic overbreadth.

B. BCRA Is Fatally Underinclusive.

The dramatic overbreadth of Title II's ban on "electioneering communications" is matched in degree by its glaring underinclusiveness. Congress has drawn haphazard lines and indulged arbitrary distinctions that prohibit electoral speech "only at certain times and in certain forms," *Republican Party of Minn. v. White*, 536 U.S. 765, 783 (2002), and that "depend upon the identity of its source." *Bellotti*, 435 U.S. at 777. "It would naively underestimate the ingenuity and resourcefulness of . . . groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted th[is] restriction . . . but nevertheless benefited the candidate's campaign." *Buckley*, 424 U.S. at 45.

The palpable underinclusiveness of BCRA's speech regulations fatally " 'diminish[es] the credibility of the government's rationale for restricting speech in the first place.' " Henderson, J., Mem. Op. 223 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994)).

Specifically, corporations can engage in unlimited print advertising, direct mail, and internet broadcasts, even if such communications are squarely intended to influence a federal election. Additionally, under BCRA, wealthy individuals and unincorporated groups remain free to spend unlimited sums on ads designed to influence federal elections.

Even more egregiously, Congress has specifically exempted from its ban any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station." Section 201(a). This means that General Electric through its NBC subsidiary or Microsoft through its ownership of MSNBC can broadcast the very same "electioneering communications" that Congress has forbidden the NRA and other nonprofits from sponsoring. The media exception thus stands for the perverse proposition that it is wrong to use corporate money to pay for a discrete amount of broadcast time to air electioneering communications, *unless* the amount of money used is so enormously large that it purchases *an entire station's worth* of broadcast time.

IV. TITLE II'S EXEMPTION FOR MEDIA CORPORATIONS VIOLATES EQUAL PROTECTION.

Again, Title II's ban on "electioneering communications" does not extend to any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcast station." During the period when all other corporations are muzzled, media companies may air as many of *their own* electioneering programs as they wish. Unlike other corporations, they can endorse candidates for election and name candidates while editorializing on particular issues. But Title II's media exception does more than give the broadcast companies a special license to discuss candidates for federal office. By banning advocacy groups from buying their own advertising time, Title II puts those broadcasters in the position of being able to grant (or deny) speech licenses to advocacy groups whose only remaining hope for air time is to be chosen by a broadcaster for inclusion on one of its programs.

This is unconstitutional. This Court has rejected the proposition that "communication by corporate members of the institutional press is entitled to greater protection than the same communication by [non-media companies]." *Belotti*, 435 U.S. at 782 n.18. The Constitution's equal protection guarantee prohibits the Government from discriminating between classes of speakers without a compelling governmental purpose. *See Austin*, 494 U.S. at 667. In *Austin*, the Court identified a purpose sufficient to survive this strict scrutiny. The "unique role that the press plays in 'informing and educating the public, offering criticism, and providing a forum for discussion and debate,' " provided Michigan with a compelling interest for exempting the media from a prohibition against corporate political expenditures that "conceivably could be interpreted to encompass election-related news stories and editorials." 494 U.S. at 667-68 (citation omitted). "[M]edia corporations differ significantly from other corporations in that their resources are devoted to the collection of information and its dissemination to the public." *Id.* at 667.

Austin cannot save BCRA's media exception because its factual predicates -- the assumptions that media corporations (1) occupy a "unique societal role" in disseminating information and (2) devote their resources to the news business -- are no longer true. Henderson, J., Mem. Op. 124-27, ¶ 54. The emergence of the internet and the absorption of the broadcast networks by non-media conglomerates have profoundly altered the nature of the traditional media companies and the role that they play. Thus, BCRA's media exemption violates the equal protection component of the Fifth Amendment. Only the NRA advanced this argument in the briefing below.

V. THE "FALLBACK" DEFINITION OF ELECTIONEERING COMMUNICATIONS IS UNCONSTITUTIONAL.

The fallback definition of "electioneering communications" is derived from the Ninth Circuit's decision in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), "a case that has been largely discredited. *See, e.g., Chamber of Commerce v. Moore*, 288 F.2d 187, 194 (5th Cir. 2002) (citing cases disagreeing with *Furgatch*)." Kollar-Kelly, J., Mem. Op. 377. This provision is constitutionally infirm for much the same reasons as the principal definition: it is animated by the same impermissible purpose; there was a less restrictive alternative available to Congress in the form of the Snowe-Jeffords provision; and the measure is overbroad insofar as it applies to expenditures by voluntary membership organizations funded exclusively by individuals. And as rewritten by Judge Leon, the back-up definition has no geographic or temporal limitation and thus is wildly overbroad.

This definition, both before and especially after Judge Leon's "saving" construction, suffers from an additional problem: vagueness. If there was one subject upon which the members of the district court panel agreed, it was the difficulty of ascertaining the meaning of a particular advertisement. Title II's fallback definition requires the NRA and other speakers to endeavor to divine whether the Government, armed with criminal enforcement power, will determine that an ad "promotes or supports" or "attacks or opposes" a candidate. As

Judge Kollar-Kotelly noted, "[t]he *Buckley* Court warned against a statutory test that relied on the viewer and listener's interpretation of a political message." Kollar-Kotelly, J., Mem. Op. 443. And "[t]he expert testimony in this case demonstrates the subjective nature of the effort of trying to capture mental impressions of viewers, and illustrates how one person's genuine issue advertisement can be another's electioneering commercial." *Id.* at 446-47. The chilling effect of such uncertainty is an independent basis for invalidating this provision.

CONCLUSION

For the foregoing reasons, the Court should note probable jurisdiction.

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May 6, 2003

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	**CONSOLIDATED ACTIONS** **Civ. No. 02-0582 (CKK, KLH, RLL)**
NATIONAL RIFLE ASSOCIATION, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	**Civ. No. 02-0581 (CKK, KLH, RLL)**

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the following plaintiffs hereby appeal to the Supreme Court of the United States from any and all adverse rulings incorporated in, antecedent to, or ancillary to the final judgment of the three-judge district court entered in this action on May 2, 2003: National Rifle Association and the National Rifle Association Political Victory Fund (in No. 02-581, *National Rifle Association v. FEC*).

This appeal is taken pursuant to section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 114.

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Dated: May 5, 2003

OPINION OF THE DISTRICT COURT

Due to the length of the opinions below, and on the advice of the Clerk's Office, appellants are not including the district court opinions in the appendix to their typewritten jurisdictional statement. The opinions can be found on the Internet at http://lsmns2o.gtwy.uscourts.gov/dcd/mcconnell-2002-ruling.html.

UNITED STATES CONSTITUTION
AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CONSTITUTION
AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

BIPARTISAN CAMPAIGN REFORM ACT OF 2002 PUB. L. NO 107-155, 116 Stat. 81

[March 27, 2002]

An Act To amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the "Bipartisan Campaign Reform Act of 2002".

(b) Table of Contents.--The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I--REDUCTION OF SPECIAL INTEREST INFLUENCE

Sec. 101. Soft money of political parties.
Sec. 102. Increased contribution limit for State committees of political parties.
Sec. 103. Reporting requirements.

TITLE II--NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A--Electioneering RCommunications

Sec. 201. Disclosure of electioneering communications.
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TITLE V--ADDITIONAL DISCLOSURE PROVISIONS

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Sec. 502. Maintenance of website of election reports.

Sec. 503. Additional disclosure reports.

Sec. 504. Public access to broadcasting records

TITLE I--REDUCTION OF SPECIAL INTEREST INFLUENCE

Sec. 101. SOFT MONEY OF POLITICAL PARTIES.

(a) In General.--Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by adding at the end the following:

"Sec. 323. SOFT MONEY OF POLITICAL PARTIES.

"(a) National Committees.--

"(1) In general.-- A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Applicability.-- The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

"(b) State, District, and Local Committees.--

"(1) In general.-- Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Applicability.----

" (A) In general.--Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts--

"(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

"(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

"(B) Conditions.--Subparagraph (A) shall only apply if--

"(i) the activity does not refer to a clearly identified candidate for Federal office;

"(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

"(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

"(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from--

"(I) any other State, local, or district committee of any State party, "(II) the national committee of a political party (including a national congressional campaign committee of a political party),

"(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

"(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

"(C) Prohibiting involvement of national parties, federal candidates and officeholders, and state parties acting jointly.--Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts--

"(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

"(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

"(c) Fundraising Costs.--An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) Tax-Exempt Organizations.--A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to--

"(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

"(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

"(e) Federal Candidates.--

"(1) In general.-- A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not--

"(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds--

"(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

"(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

"(2) State law.-- Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

"(3) Fundraising events.-- Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

"(4) Permitting certain solicitations.----

"(A) General solicitations.--Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

"(B) Certain specific solicitations.--In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if--

"(i) the solicitation is made only to individuals; and

"(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

"(f) State Candidates.--

"(1) In general.-- A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) Exception for certain communications.-- Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both.".

(b) Definitions.--Section 301 of the Federal Election

Campaign Act of 1971 *(2 U.S.C. 431)* is amended by adding at the end thereof the following:

"(20) Federal election activity.----

"(A) In general.--The term 'Federal election activity' means--

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

"(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

"(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

"(B) Excluded activity.--The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for--

"(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

"(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

"(iii) the costs of a State, district, or local political convention; and

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

"(21) Generic campaign activity.-- The term 'generic campaign activity' means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

"(22) Public communication.-- The term 'public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

"(23) Mass mailing.-- The term 'mass mailing' means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

"(24) Telephone bank.-- The term 'telephone bank' means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.".

Sec. 102. INCREASED CONTRIBUTION LIMIT FOR STATE COMMITTEES OF POLITICAL PARTIES.

Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(1)) is amended--

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)--

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.".

Sec. 103. REPORTING REQUIREMENTS.

(a) Reporting Requirements.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)* is amended by adding at the end the following:

"(e) Political Committees.--

"(1) National and congressional political committees.--The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

"(2) Other political committees to which section 323 applies.----

"(A) In general.--In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 323(b)(1) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

"(B) Specific disclosure by state and local parties of certain non-federal amounts permitted to be spent on federal election activity.--Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B).

"(3) Itemization.-- If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

"(4) Reporting periods.-- Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).".

(b) Building Fund Exception to the Definition of Contribution.--

(1) In general.-- Section 301(8)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431*(8)(B)) is amended--

(A) by striking clause (viii); and

(B) by redesignating clauses (ix) through (xv) as clauses (viii) through (xiv), respectively.

(2) Nonpreemption of state law.-- Section 403 of such Act *(2 U.S.C. 453)* is amended--

(A) by striking "The provisions of this Act" and inserting "(a) In General.--Subject to subsection (b), the provisions of this Act"; and

(B) by adding at the end the following:

"(b) State and Local Committees of Political Parties.--Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.

TITLE II—NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A--Electioneering Communications

Sec. 201. DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.

(a) In General.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)*, as amended by section 103, is amended by adding at the end the following new subsection:

"(f) Disclosure of Electioneering Communications.--

"(1) Statement required.-- Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

"(2) Contents of statement.-- Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

"(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

"(B) The principal place of business of the person making the disbursement, if not an individual.

"(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

"(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

"(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act *(8 U.S.C. 1101*(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

"(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

"(3) Electioneering communication.-- For purposes of this subsection--

"(A) In general.--(i) The term 'electioneering communication' means any broadcast, cable, or satellite communication which--

"(I) refers to a clearly identified candidate for Federal office;

"(II) is made within--

"(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

"(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

"(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

"(B) Exceptions.--The term 'electioneering communication' does not include--

"(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

"(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

"(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii).

"(C) Targeting to relevant electorate.--For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if the communication can be received by 50,000 or more persons--

"(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

"(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

"(4) Disclosure date.-- For purposes of this subsection, the term 'disclosure date' means--

"(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

"(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

"(5) Contracts to disburse.-- For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(6) Coordination with other requirements.-- Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

"(7) Coordination with internal revenue code.-- Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.".

(b) Responsibilities of Federal Communications Commission. --The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.

Sec. 202. COORDINATED COMMUNICATIONS AS CONTRIBUTIONS.

Section 315(a)(7) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(7)) is amended--

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

"(C) if--

"(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)); and

"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and".

Sec. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS.

(a) In General.--Section 316(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b*(b)(2)) is amended by inserting "or for any applicable electioneering communication" before ", but shall not include".

(b) Applicable Electioneering Communication.--Section 316 of such Act is amended by adding at the end the following:

"(c) Rules Relating to Electioneering Communications.--

"(1) Applicable electioneering communication.-- For purposes of this section, the term 'applicable electioneering communication' means an electioneering communication (within the meaning of section 304(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

"(2) Exception.-- Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act *(8 U.S.C. 1101*(a)(20))). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section.

"(3) Special operating rules.----

"(A) Definition under paragraph (1).--An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

"(B) Exception under paragraph (2).--A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

"(4) Definitions and rules.-- For purposes of this subsection--

"(A) the term 'section 501(c)(4) organization' means--

"(i) an organization described in section 501(c)(4) of the

Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

"(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

"(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

"(5) Coordination with internal revenue code.-- Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.".

Sec. 204. RULES RELATING TO CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.

Section 316(c) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b)*, as added by section 203, is amended by adding at the end the following:

"(6) Special rules for targeted communications.----

"(A) Exception does not apply.--Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

"(B) Targeted communication.--For purposes of subparagraph (A), the term 'targeted communication' means an electioneering communication (as defined in section 304(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

"(C) Definition.--For purposes of this paragraph, a communication is 'targeted to the relevant electorate' if it meets the requirements described in section 304(f)(3)(C).".

Subtitle B--Independent and Coordinated Expenditures

Sec. 211. DEFINITION OF INDEPENDENT EXPENDITURE.

Section 301 of the Federal Election Campaign Act *(2 U.S.C. 431)* is amended by striking paragraph (17) and inserting the following:

"(17) Independent expenditure.-- The term 'independent expenditure' means an expenditure by a person--

"(A) expressly advocating the election or defeat of a clearly identified candidate; and

"(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.".

Sec. 212. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) In General.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)* (as amended by section 201) is amended--

(1) in subsection (c)(2), by striking the undesignated matter after subparagraph (C); and

(2) by adding at the end the following:

"(g) Time for Reporting Certain Expenditures.--

"(1) Expenditures aggregating $1,000.----

"(A) Initial report.--A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

"(B) Additional reports.--After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

"(2) Expenditures aggregating $10,000.----

"(A) Initial report.--A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

"(B) Additional reports.--After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

"(3) Place of filing; contents.-- A report under this subsection--

"(A) shall be filed with the Commission; and

"(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.".

(b) Time of Filing of Certain Statements.--

(1) In general.-- Section 304(g) of such Act, as added by subsection (a), is amended by adding at the end the following:

"(4) Time of filing for expenditures aggregating $1,000.-- Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.".

(2) Conforming amendments.-- (A) Section 304(a)(5) of such Act *(2 U.S.C. 434*(a)(5)) is amended by striking "the second sentence of subsection (c)(2)" and inserting "subsection (g)(1)".

(B) Section 304(d)(1) of such Act *(2 U.S.C. 434*(d)(1)) is amended by inserting "or (g)" after "subsection (c)".

Sec. 213. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.

Section 315(d) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(d)) is amended--

(1) in paragraph (1), by striking "and (3)" and inserting ", (3), and (4)"; and

(2) by adding at the end the following:

"(4) Independent versus coordinated expenditures by party.----

"(A) In general.--On or after the date on which a political party nominates a candidate, no committee of the political party may make--

"(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle; or

"(ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

"(B) Application.--For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

"(C) Transfers.--A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.".

Sec. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES.

(a) In General.--Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(7)(B)) is amended--

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following new clause:

"(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and".

(b) Repeal of Current Regulations.--The regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees adopted by the Federal Election Commission and published in the Federal Register at page 76138 of volume 65, Federal Register, on December 6, 2000, are repealed as of the date by which the Commission is required to promulgate new regulations under subsection (c) (as described in section 402(c)(1)).

(c) Regulations by the Federal Election Commission.--The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address--

(1) payments for the republication of campaign materials;

(2) payments for the use of a common vendor;

(3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and

(4) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party.

(d) Meaning of Contribution or Expenditure for the Purposes of Section 316.--Section 316(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441b*(b)(2)) is amended by striking "shall include" and inserting "includes a contribution or expenditure, as those terms are defined in section 301, and also includes".

TITLE III--MISCELLANEOUS

Sec. 301. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by striking section 313 and inserting the following:

"Sec. 313. *<2 USC 439a>* USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

"(a) Permitted Uses.--A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual--

"(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

"(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

"(3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or

"(4) for transfers, without limitation, to a national, State, or local committee of a political party.

"(b) Prohibited Use.--

"(1) In general.-- A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

"(2) Conversion.-- For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including--

"(A) a home mortgage, rent, or utility payment;

"(B) a clothing purchase;

"(C) a noncampaign-related automobile expense;

"(D) a country club membership;

"(E) a vacation or other noncampaign-related trip;

"(F) a household food item;

"(G) a tuition payment;

"(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

"(I) dues, fees, and other payments to a health club or recreational facility.".

Sec. 302. PROHIBITION OF FUNDRAISING ON FEDERAL PROPERTY.

Section 607 of title 18, United States Code, is amended--

(1) by striking subsection (a) and inserting the following:

"(a) Prohibition.--

"(1) In general.-- It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

"(2) Penalty.-- A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both."; and

(2) in subsection (b), by inserting "or Executive Office of the President" after "Congress".

Sec. 303. STRENGTHENING FOREIGN MONEY BAN.

Section 319 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e)* is amended--

(1) by striking the heading and inserting the following: " contributions and donations by foreign nationals "; and

(2) by striking subsection (a) and inserting the following:

"(a) Prohibition.--It shall be unlawful for--

"(1) a foreign national, directly or indirectly, to make--

"(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

"(B) a contribution or donation to a committee of a political party; or

"(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

"(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.".

Sec. 304. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) Increased Limits for Individuals.--Section 315 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a)* is amended--

(1) in subsection (a)(1), by striking "No person" and inserting "Except as provided in subsection (i), no person"; and

(2) by adding at the end the following:

"(i) Increased Limit To Allow Response to Expenditures From Personal Funds.--

"(1) Increase.----

"(A) In general.--Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the 'applicable limit') with respect to that candidate shall be the increased limit.

"(B) Threshold amount.--

"(i) State-by-state competitive and fair campaign formula.--In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of--

"(I) $150,000; and

"(II) $0.04 multiplied by the voting age population.

"(ii) Voting age population.--In this subparagraph, the term 'voting age population' means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e)).

"(C) Increased limit.--Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over--

"(i) 2 times the threshold amount, but not over 4 times that amount--

"(I) the increased limit shall be 3 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

"(ii) 4 times the threshold amount, but not over 10 times that amount--

"(I) the increased limit shall be 6 times the applicable limit; and

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and "(iii) 10 times the threshold amount--

"(I) the increased limit shall be 6 times the applicable limit;

"(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

"(D) Opposition personal funds amount.--The opposition personal funds amount is an amount equal to the excess (if any) of--

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(2) Time to accept contributions under increased limit.----

"(A) In general.--Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

"(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B); and "(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

"(B) Effect of withdrawal of an opposing candidate.--A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

"(3) Disposal of excess contributions.----

"(A) In general.--The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

"(B) Return to contributors.--A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(j) Limitation on Repayment of Personal Loans.--Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.".

(b) Notification of Expenditures From Personal Funds.--Section 304(a)(6) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)(6)) is amended--

(1) by redesignating subparagraph (B) as subparagraph (E); and

(2) by inserting after subparagraph (A) the following:

"(B) Notification of expenditure from personal funds.--

"(i) Definition of expenditure from personal funds.--In this subparagraph, the term 'expenditure from personal funds' means--

"(I) an expenditure made by a candidate using personal funds; and

"(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

"(ii) Declaration of intent.--Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with--

"(I) the Commission; and

"(II) each candidate in the same election.

"(iii) Initial notification.--Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with--

"(I) the Commission; and

"(II) each candidate in the same election.

"(iv) Additional notification.--After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with--

"(I) the Commission; and

"(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

"(v) Contents.--A notification under clause (iii) or (iv) shall include--

"(I) the name of the candidate and the office sought by the candidate;

"(II) the date and amount of each expenditure; and

"(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(C) Notification of disposal of excess contributions.--In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.

"(D) Enforcement.--For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309.".

(c) Definitions.--Section 301 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431),* as amended by section 101(b), is further amended by adding at the end the following:

"(25) Election cycle.-- For purposes of sections 315(i) and 315A and paragraph (26), the term 'election cycle' means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

"(26) Personal funds.-- The term 'personal funds' means an amount that is derived from--

"(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had--

"(i) legal and rightful title; or

"(ii) an equitable interest;

"(B) income received during the current election cycle of the candidate, including--

"(i) a salary and other earned income from bona fide employment;

"(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

"(iii) bequests to the candidate;

"(iv) income from trusts established before the beginning of the election cycle;

"(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

"(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

"(vii) proceeds from lotteries and similar legal games of chance; and

"(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of 1/2 of the property.".

Sec. 305. LIMITATION ON AVAILABILITY OF LOWEST UNIT CHARGE FOR FEDERAL CANDIDATES ATTACKING OPPOSITION.

(a) In General.--Section 315(b) of the Communications Act of 1934 *(47 U.S.C. 315*(b)) is amended--

(1) by striking "(b) The charges" and inserting the following:

"(b) Charges.--

"(1) In general.-- The charges";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

"(2) Content of broadcasts.----

"(A) In general.--In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

"(B) Limitation on charges.--If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

"(C) Television broadcasts.--A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds--

"(i) a clearly identifiable photographic or similar image of the candidate; and

"(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

"(D) Radio broadcasts.--A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office the candidate is seeking, and indicates that the candidate has approved the broadcast.

"(E) Certification.--Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

"(F) Definitions.--For purposes of this paragraph, the terms 'authorized committee' and 'Federal office' have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431).*".

(b) Conforming Amendment.--Section 315(b)(1)(A) of the Communications Act of 1934 *(47 U.S.C. 315*(b)(1)(A)), as amended by this Act, is amended by inserting "subject to paragraph (2)," before "during the forty-five days".

(c) Effective Date.--The amendments made by this section shall apply to broadcasts made after the effective date of this Act.

Sec. 306. SOFTWARE FOR FILING REPORTS AND PROMPT DISCLOSURE OF CONTRIBUTIONS.

Section 304(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)) is amended by adding at the end the following:

"(12) Software for filing of reports.----

"(A) In general.--The Commission shall--

"(i) promulgate standards to be used by vendors to develop software that--

"(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

"(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

"(III) allows the Commission to post the information on the Internet immediately upon receipt; and

"(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

"(B) Additional information.--To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

"(C) Required use.--Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

"(D) Required posting.--The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.".

Sec. 307. MODIFICATION OF CONTRIBUTION LIMITS.

(a) Increase in Individual Limits for Certain Contributions.--Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(1)) is amended--

(1) in subparagraph (A), by striking "$1,000" and inserting "$2,000"; and

(2) in subparagraph (B), by striking "$20,000" and inserting "$25,000".

(b) Increase in Annual Aggregate Limit on Individual Contributions.--Section 315(a)(3) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(a)(3)) is amended to read as follows:

"(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than--

"(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

"(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.".

(c) Increase in Senatorial Campaign Committee Limit.--Section 315(h) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(h)) is amended by striking "$17,500" and inserting "$35,000".

(d) Indexing of Contribution Limits.--Section 315(c) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(c)) is amended--

(1) in paragraph (1)--

(A) by striking the second and third sentences;

(B) by inserting "(A)" before "At the beginning"; and

(C) by adding at the end the following:

"(B) Except as provided in subparagraph (C), in any calendar year after 2002--

"(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

"(ii) each amount so increased shall remain in effect for the calendar year; and

"(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

"(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election."; and

(2) in paragraph (2)(B), by striking "means the calendar year 1974" and inserting "means--

"(i) for purposes of subsections (b) and (d), calendar year 1974; and

"(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001".

(e) Effective Date--The amendments made by this section shall apply with respect to contributions made on or after January 1, 2003.

Sec. 308. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) In General.--Chapter 5 of title 36, United States Code, is amended by--

(1) redesignating section 510 as section 511; and

(2) inserting after section 509 the following:

"Sec. 510. Disclosure of and prohibition on certain donations

"(a) In General.--A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

"(b) Disclosure.--

"(1) In general.-- Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200.

"(2) Contents of report.-- A report filed under paragraph (1) shall contain--

"(A) the amount of the donation;

"(B) the date the donation is received; and

"(C) the name and address of the person making the donation.

"(c) Limitation.--The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e*(b)))".

(b) Reports Made Available by FEC.--Section 304 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434)*, as amended by sections 103, 201, and 212 is amended by adding at the end the following:

"(h) Reports From Inaugural Committees.--The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.".

Sec. 309. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441h)* is amended--

(1) by inserting "(a) In General.--" before "No person"; and

(2) by adding at the end the following:

"(b) Fraudulent Solicitation of Funds.--No person shall--

"(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

"(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).".

Sec. 310. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) Clean Money Clean Elections Defined.--In this section, the term "clean money clean elections" means funds received under State laws that provide in whole or in part for the public financing of election campaigns.

(b) Study.--

(1) In general.-- The Comptroller General shall conduct a study of the clean money clean elections of Arizona and Maine.

(2) Matters studied.----

(A) Statistics on clean money clean elections candidates.-- The Comptroller General shall determine--

(i) the number of candidates who have chosen to run for public office with clean money clean elections including--

(I) the office for which they were candidates;

(II) whether the candidate was an incumbent or a challenger; and
(III) whether the candidate was successful in the candidate's bid for public office; and

(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

(B) Effects of clean money clean elections.--The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

(c) Report.--Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).

Sec. 311. CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441d)* is amended--

(1) in subsection (a)--

(A) in the matter preceding paragraph (1)--

(i) by striking "Whenever" and inserting "Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever";

(ii) by striking "an expenditure" and inserting "a disbursement";

(iii) by striking "direct"; and

(iv) by inserting "or makes a disbursement for an electioneering communication (as defined in section 304(f)(3))" after "public political advertising"; and

(B) in paragraph (3), by inserting "and permanent street address, telephone number, or World Wide Web address" after "name"; and

(2) by adding at the end the following:

"(c) Specification.--Any printed communication described in subsection (a) shall--

"(1) be of sufficient type size to be clearly readable by the recipient of the communication;

"(2) be contained in a printed box set apart from the other contents of the communication; and

"(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

"(d) Additional Requirements.--

"(1) Communications by candidates or authorized persons. --

"(A) By radio.--Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

"(B) By television.--Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement--

"(i) shall be conveyed by--

"(I) an unobscured, full-screen view of the candidate making the statement, or

"(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and "(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

"(2) Communications by others.-- Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: ' G7 XXXXX is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.".

Sec. 312. INCREASE IN PENALTIES.

(a) In General.--Subparagraph (A) of section 309(d)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 437g*(d)(1)(A)) is amended to read as follows:

"(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure--

"(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

"(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.".

(b) Effective Date.--The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

Sec. 313. STATUTE OF LIMITATIONS.

(a) In General.--Section 406(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 455*(a)) is amended by striking "3" and inserting "5".

(b) Effective Date.--The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

Sec. 314 SENTENCING GUIDELINES.

(a) In General.--The United States Sentencing Commission shall--

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) Considerations.--The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves--

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) Effective Date; Emergency Authority To Promulgate Guidelines.--

(1) Effective date.-- Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of--

(A) 90 days after the effective date of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) Emergency authority to promulgate guidelines.-- The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired.

Sec. 315. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) Increase in Civil Money Penalty for Knowing and Willful Violations.--Section 309(a) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 437g*(a)) is amended--

(1) in paragraph (5)(B), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)"; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount

involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)".

(b) Increase in Criminal Penalty.--Section 309(d)(1) of such Act *(2 U.S.C. 437g*(d)(1)) is amended by adding at the end the following new subparagraph:

"(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be--

"(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

"(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of--

"(I) $50,000; or

"(II) 1,000 percent of the amount involved in the violation; or

"(iii) both imprisoned under clause (i) and fined under clause (ii).".

(c) Effective Date.--The amendments made by this section shall apply with respect to violations occurring on or after the effective date of this Act.

Sec. 316. RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a*(i)(1)), as added by this Act, is amended by adding at the end the following:

"(E) Special rule for candidate's campaign funds.--

"(i) In general.--For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) Gross receipts advantage.--For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of--

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.".

Sec. 317. CLARIFICATION OF RIGHT OF NATIONALS OF THE UNITED STATES TO MAKE POLITICAL CONTRIBUTIONS.

Section 319(b)(2) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441e*(b)(2)) is amended by inserting after

"United States" the following: "or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act)".

Sec. 318. PROHIBITION OF CONTRIBUTIONS BY MINORS.

Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.), as amended by section 101, is further amended by adding at the end the following new section:

" prohibition of contributions by minors

"Sec. 324 *<2 USC 441k>* An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.".

Sec. 319. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) Increased Limits.--Title III of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431* et seq.) is amended by inserting after section 315 the following new section:

"modification of certain limits for house candidates in response to personal fund expenditures of opponents

"Sec. 315A. *<2 USC 441a-1>* (a) Availability of Increased Limit--

"(1) In general.-- Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or

Resident Commissioner to, the Congress exceeds $350,000--

"(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

"(B) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

"(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

"(2) Determination of opposition personal funds amount.----

"(A) In general.--The opposition personal funds amount is an amount equal to the excess (if any) of--

"(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

"(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

"(B) Special rule for candidate's campaign funds.--

"(i) In general.--For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

"(ii) Gross receipts advantage.--For purposes of clause (i), the term 'gross receipts advantage' means the excess, if any, of--

"(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

"(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

"(3) Time to accept contributions under increased limit.----

"(A) In general.--Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)--

"(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

"(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

"(B) Effect of withdrawal of an opposing candidate.--A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

"(4) Disposal of excess contributions.----

"(A) In general.--The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

"(B) Return to contributors.--A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

"(b) Notification of Expenditures From Personal Funds.--

"(1) In general.----

"(A) Definition of expenditure from personal funds.--In this paragraph, the term 'expenditure from personal funds' means--

"(i) an expenditure made by a candidate using personal funds; and

"(ii) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

"(B) Declaration of intent.--Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

"(C) Initial notification.--Not later than 24 hours after a candidate described in subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

"(D) Additional notification.--After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

"(E) Contents.--A notification under subparagraph (C) or (D) shall include--

"(i) the name of the candidate and the office sought by the candidate;

"(ii) the date and amount of each expenditure; and

"(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

"(F) Place of filing.--Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with--

"(i) the Commission; and

"(ii) each candidate in the same election and the national party of each such candidate.

"(2) Notification of disposal of excess contributions.-- In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a)) and the manner in which the candidate or the candidate's authorized committee used such funds.

"(3) Enforcement.-- For provisions providing for the enforcement of the reporting requirements under this subsection, see section 309.".

(b) Conforming Amendment.--Section 315(a)(1) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 441a),* as amended by section 304(a), is amended by striking "subsection (i)," and inserting "subsection (i) and section 315A,".

TITLE IV--SEVERABILITY; EFFECTIVE DATE

Sec. 401. SEVERABILITY.

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

Sec. 402. EFFECTIVE DATES AND REGULATIONS.

(a) General Effective Date.--

(1) In general.-- Except as provided in the succeeding provisions of this section, the effective date of this Act, and the amendments made by this Act, is November 6, 2002.

(2) Modification of contribution limits.-- The amendments made by--

(A) section 102 shall apply with respect to contributions made on or after January 1, 2003; and

(B) section 307 shall take effect as provided in subsection (e) of such section.

(3) Severability; effective dates and regulations; judicial review.-- Title IV shall take effect on the date of enactment of this Act.

(4) Provisions not to apply to runoff elections.-- Section 323(b) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), section 103(a), title II, sections 304 (including section 315(j) of Federal Election Campaign Act of 1971, as added by section 304(a)(2)), 305 (notwithstanding subsection (c) of such section), 311, 316, 318, and 319, and title V (and the amendments made by such sections and titles) shall take effect on November 6, 2002, but shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date.

(b) Soft Money of National Political Parties.--

(1) In general.-- Except for subsection (b) of such section, section 323 of the Federal Election Campaign Act of 1971 (as added by section 101(a)) shall take effect on November 6, 2002.

(2) Transitional rules for the spending of soft money of national political parties.----

(A) In general.--Notwithstanding section 323(a) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), if a national committee of a political party described in such section (including any person who is subject to such section under paragraph (2) of such section), has received funds described in such section prior to November 6, 2002, the rules described in subparagraph (B) shall apply with respect to the spending of the amount of such funds in the possession of such committee as of such date.

(B) Use of excess soft money funds.--

(i) In general.--Subject to clauses (ii) and (iii), the national committee of a political party may use the amount described in subparagraph (A) prior to January 1, 2003, solely for the purpose of--

(I) retiring outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(II) paying expenses or retiring outstanding debts or paying for obligations that were incurred solely in connection with any runoff election, recount, or election contest resulting from an election held prior to November 6, 2002.

(ii) Prohibition on using soft money for hard money expenses, debts, and obligations.--A national committee of a political party may not use the amount described in subparagraph (A) for any expenditure (as defined in section 301(9) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 431*(9))) or for retiring outstanding debts or obligations that were incurred for such an expenditure.

(iii) Prohibition of building fund uses.--A national committee of a political party may not use the amount described in subparagraph (A) for activities to defray the costs of the construction or purchase of any office building or facility.

(c) Regulations.--

(1) In general.-- Except as provided in paragraph (2), the Federal Election Commission shall promulgate regulations to carry out this Act and the amendments made by this Act that are under the Commission's jurisdiction not later than 270 days after the date of enactment of this Act.

(2) Soft money of political parties.-- Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall promulgate regulations to carry out title I of this Act and the amendments made by such title.

Sec. 403. JUDICIAL REVIEW.

(a) Special Rules for Actions Brought on Constitutional Grounds.--If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) Intervention by Members of Congress.--In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) Challenge by Members of Congress.--Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

(d) Applicability.--

(1) Initial claims.-- With respect to any action initially filed on or before December 31, 2006, the provisions of subsection (a) shall apply with respect to each action described in such section.

(2) Subsequent actions.-- With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

TITLE V--ADDITIONAL DISCLOSURE PROVISIONS

Sec. 501. INTERNET ACCESS TO RECORDS.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 *(2 U.S.C. 434*(a)(11)(B)) is amended to read as follows:

"(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.".

Sec. 502. MAINTENANCE OF WEBSITE OF ELECTION REPORTS.

(a) In General.--The Federal Election Commission shall maintain a central site on the Internet to make accessible to the public all publicly available election-related reports and information.

(b) Election-Related Report.--In this section, the term "election-related report" means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) Coordination With Other Agencies.--Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

Sec. 503. ADDITIONAL DISCLOSURE REPORTS.

(a) Principal Campaign Committees.--Section 304(a)(2)(B) of the Federal Election Campaign Act of 1971 is amended by striking "the following reports" and all that follows through the period and inserting "the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.".

(b) National Committee of a Political Party.--Section 304(a)(4) of such Act *(2 U.S.C. 434*(a)(4)) is amended by adding at the end the following flush sentence: "Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).".

Sec. 504. PUBLIC ACCESS TO BROADCASTING RECORDS.

Section 315 of the Communications Act of 1934 *(47 U.S.C. 315)*, as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following:

"(e) Political Record.--

"(1) In general.-- A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that--

"(A) is made by or on behalf of a legally qualified candidate for public office; or

"(B) communicates a message relating to any political matter of national importance, including--

"(i) a legally qualified candidate;

"(ii) any election to Federal office; or
"(iii) a national legislative issue of public importance.

"(2) Contents of record.-- A record maintained under paragraph (1) shall contain information regarding--

"(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

"(B) the rate charged for the broadcast time;

"(C) the date and time on which the communication is aired;

"(D) the class of time that is purchased;

"(E) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

"(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

"(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

"(3) Time to maintain file.-- The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.".

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Supreme Court, U.S.
FILED
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No. 02-1675

In the Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

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QUESTION PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The question presented by this appeal is as follows:

Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

In the Supreme Court of the United States

No. 02-1675

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported. See J.S. App. 4a.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-

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[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

3a) was filed on May 5, 2003. Appellants' jurisdictional statement was filed on May 6, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court rejecting appellants' constitutional challenges in part. As of this date, three other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4), this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." *Ibid.* In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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MAY 2003

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[2] Contemporaneously with this response, appellees are filing a motion for expedited briefing schedule applicable to this appeal and to the other pending appeals (see p. 2, *supra*) from the district court's judgment in this case.

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Supreme Court, U.S.
FILED
MAY 23 2003
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Nos. 02-1674 and 02-1675

IN THE

Supreme Court of the United States

SENATOR MITCH MCCONNELL, *et al.*,
Appellants,
v.
FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

NATIONAL RIFLE ASSOCIATION, *et al.*,
Appellants,
v.
FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

On Appeals from the
United States District Court
for the District of Columbia

INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

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QUESTIONS PRESENTED

1. Whether the Court should summarily dispose of the McConnell appellants' constitutional challenges to Sections 211, 212, and 214 of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, because those challenges were either waived below, or are plainly nonjusticiable or insubstantial under settled law.

2. Whether, in other respects, the Court should note probable jurisdiction over the McConnell and NRA appellants' constitutional challenges to BCRA, and set the appeals on those issues for briefing and oral argument.

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IN THE

Supreme Court of the United States

No. 02-1674

SENATOR MITCH MCCONNELL, *et al.*,
Appellants,
v.
FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

No. 02-1675

NATIONAL RIFLE ASSOCIATION, *et al.*,
Appellants,
v.
FEDERAL ELECTION COMMISSION, *et al.*,
Appellees.

INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

INTRODUCTION

Although intervenor-appellees take issue with the positions taken on the merits by Senator McConnell, *et al.*, and the National Rifle Association, *et al.*, in their jurisdictional statements, we agree that most of the questions presented in their jurisdictional statements warrant plenary consideration by this Court.[1] In light of

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[1] Intervenor-appellees are Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin Meehan, Senator Olympia Snowe, and Senator James Jeffords. They were granted leave to intervene as of right in the proceedings below pursuant to BCRA § 403(b) and Fed. R. Civ. P. 24(a)(1). *See* Orders of May 3 and May 10, 2002 (granting intervention). The intervenors are also appellants in No. 02-1702, *McCain* v. *McConnell*. *See* 02-1702 J.S. 15 & n.17.

Sections 403(a)(3) and (a)(4) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, which provide for direct and expedited review in this Court of any final decision of a three-judge district court hearing a challenge to the constitutionality of BCRA, and in light of the importance of the issues to the nation, intervenor-appellees agree with the McConnell and NRA appellants that the Court should note probable jurisdiction over these appeals and set the case for briefing and oral argument.

Some of the questions presented in Senator McConnell's jurisdictional statement (No. 02-1674), however, do not warrant plenary consideration by this Court. Those questions seek (in whole or in part) to raise challenges to BCRA that were unequivocally waived below, or are clearly nonjusticiable under well-settled principles of constitutional and administrative law, or are otherwise so insubstantial as not to justify further briefing and argument (particularly given the number and complexity of the other issues properly before the Court). Summary disposition of those issues at this stage of the case would focus the briefing on the remaining issues that do warrant this Court's plenary review, and may assist in the orderly resolution of these appeals. Accordingly, the Court may wish to consider summarily disposing of the following issues:

First, the Court should summarily dispose of Senator McConnell's challenge to a provision in BCRA Section 212 requiring disclosure of contracts to make disbursements with respect to independent expenditures. *See* McConnell J.S. Question Presented 3 and pp. 14-15. Under settled law, that challenge is clearly nonjusticiable.

Second, the Court should summarily dispose of all challenges to the "independent" and "coordinated" expenditure provisions in BCRA Sections 211 and 214. *See* McConnell J.S. Question Presented 4 and pp. 15-16. Appellants waived all claims with respect to Section 211; their challenges to Section 214(b) and (c) are clearly nonjusticiable; and their other challenges to Section 214 are insubstantial under settled law.

ARGUMENT

I. APPELLANTS FAIL TO RAISE JUSTICIABLE OR SUBSTANTIAL QUESTIONS WITH RESPECT TO ANY "ADVANCE NOTICE" REQUIREMENT IN BCRA SECTION 212

The third question presented in Senator McConnell's jurisdictional statement is "[w]hether the district court erred by holding nonjusticiable challenges to, and upholding, portions of the 'advance notice' provisions of BCRA . . . because they violate the First Amendment." The targeted provisions are disclosure requirements in BCRA Section 212 applicable to "independent expenditures."[2] Appellants contend that, because the statutory language refers to the disclosure not only of disbursements but also of contracts to make such disbursements, the statute must be read as requiring disclosure in advance of any actual independent expenditures. That requirement, they assert, "will chill the exercise of free speech by forcing would-be speakers to disclose their plans in advance." McConnell J.S. 15.

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[2] Senator McConnell has also presented a constitutional challenge to the "advance notice" requirement of BCRA § 201 in his jurisdictional statement, *see* McConnell J.S. Question Presented 3 and pp. 14-15. In fact, Senator McConnell prevailed on that challenge in the district court. Section 201 of BCRA amended 2 U.S.C. § 434(f) to add disclosure requirements with respect to disbursements for "electioneering communications" "if the person has executed a contract to make the disbursement." The district court ruled that appellants' constitutional challenge to Section 201 was ripe, *see* Supplemental Appendix to Jurisdictional Statement (JSSA) 109-11sa (per curiam), and ruled in their favor on the merits as well, JSSA 115sa (per curiam). The government has appealed from that aspect of the district court's decision. *See* No. 02-1676, Gov't J.S. 26-27. Senator McConnell, however, may not appeal from the district court's ruling in his favor on that point. *See Perez* v. *Ledesma*, 401 U.S. 82, 87 n.3 (1971); *Public Serv. Comm'n* v. *Brashear Freight Lines, Inc.*, 306 U.S. 204, 206 (1939).

The district court also held that the challenged "advance notice" requirement of BCRA § 201 is severable from the remainder of that section. JSSA 115-16sa (per curiam); *see* BCRA § 401 (severability provision). Senator McConnell's jurisdictional statement does not mention, let alone contest, that severability ruling, which applied well-established law.

That challenge warrants summary disposition. The FEC's regulations implementing Section 212 unambiguously construe the statute *not* to require such advance disclosure. *See* 68 Fed. Reg. 404, 452 (Jan. 3, 2003) (to be codified at 11 C.F.R. § 109.10). The district court therefore found no current threat that appellants, or anyone else, will have an advance-notice requirement enforced against them under Section 212. *See* Supplemental Appendix to Jurisdictional Statement (JSSA) 130-34sa (per curiam).[3]

Nowhere in Senator McConnell's Jurisdictional Statement is there any argument explaining why appellants think the district court's opinion was wrong on this point. Nor is there any apparent argument to be offered. It is black-letter law that "an actual and well-founded fear that the law will be enforced" is a prerequisite to a finding of a case or controversy when a plaintiff seeks pre-enforcement review of the constitutionality of a statute on First Amendment grounds. *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 393 (1988).[4] In light of the FEC's regulations, there can be no credible threat that Section 212 will be enforced to require appellants to give "advance notice" of their disbursements as they have contended. The district court therefore correctly concluded that appellants' challenge to Section 212 is nonjusticiable, and this Court should summarily dispose of that challenge.

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[3] In the district court, another of the parties challenging Section 212 on this basis argued that the FEC regulations offered no assurance against enforcement of an "advance notice" requirement because the regulations "may not be approved by Congress" or the Commission might later change its mind. JSSA 134sa (per curiam). The congressional review period has now passed, however, and the regulations remain in effect. And the FEC could not, of course, change its mind without notice-and-comment rulemaking. If it did so, a case or controversy might then be presented, but that purely speculative possibility does not create a present threat that the statute will be construed in the manner the challengers claim to fear.

[4] *See also Renne* v. *Geary*, 50 U.S. 312, 323 (1991); *Wisconsin Right to Life, Inc.* v. *Paradise*, 138 F.3d 1183, 1185 (7th Cir. 1998) (holding that a challenge to a state election law did not present a case or controversy where an opinion of the state attorney general and a regulation of the state elections board precluded application of the law to the challenger).

II. APPELLANTS FAIL TO RAISE JUSTICIABLE OR SUBSTANTIAL QUESTIONS WITH RESPECT TO THE COORDINATION PROVISIONS OF BCRA SECTIONS 211 AND 214

The fourth question presented in Senator McConnell's jurisdictional statement is "[w]hether the dstrict court erred by holding nonjusticiable challenges to, and upholding, the 'coordination' provisions of BCRA (sections 202, 211, and 214), because they violate the First Amendment." The Court should summarily dispose of appellants' challenges to Sections 211 and 214 because (a) appellants expressly waived all challenges to Section 211; and (b) the rulemaking provisions of Section 214 present no justiciable issues, and the remaining provisions raise no substantial issue warranting plenary consideration.[5]

A. Section 211 amends FECA to include, in the definition of "independent expenditure," any expenditure that is "not made in concert or cooperation with or at the request or suggestion of [a] candidate, the candidate's authorized political committee, or their agents, or a political party or its agents." Senator McConnell now seeks to challenge Section 211 on First Amendment grounds. *See* McConnell J.S. Question Presented 4 and pp. 7, 15-16. In the district court, however, Senator McConnell and other plaintiffs challenging BCRA waived all challenges to Section 211. Neither the Per Curiam opinion's "Chart of the Court's Rulings" nor Judge Henderson's comprehensive "catalogue" of all challenges to BCRA's provisions contains any reference to Section 211. *See* JSSA 10-15sa (per curiam); JSSA 186-214sa (Henderson). The reason for this omission is spelled out on page 128sa, note 81 of the Per Curiam opinion:

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[5] Appellants' constitutional challenge to the coordination provisions of Section 202, although flawed, does present a substantial question insofar as that section is linked to the "electioneering communications" provisions of BCRA that are before the Court. *See* McConnell J.S. 16. As the district court majority noted, however, some of the Section 202 arguments made below also "challenge[] the scope of activities covered by BCRA's definition of 'coordination' "; the majority concluded that those arguments "are not ripe given the statutory construction of Section 214 and the recent promulgation of final regulations by the FEC." JSSA 130sa (per curiam). If any appellant presses such arguments in this Court, the Section 202 questions are to that extent nonjusticiable and insubstantial for all the reasons set forth in this response with respect to appellants' claims regarding Section 214.

> Although Plaintiffs ask for judgment as to BCRA's Section 211, . . . at oral argument they stated that they were not challenging the provision. *See* Tr. at 341-42 (Judge Henderson: Mr. Starr, I've got down that you all are challenging [Section] 211. Am I wrong about that? ... [Mr.] Baran: We are not challenging section 211[.]). Furthermore, other than a description of the provision, ... Plaintiffs' briefs are silent on the provision. (Second alteration in original.)

It is difficult to imagine a more plain case of waiver.[6] *See, e.g., United States* v. *United Foods, Inc.*, 533 U.S. 405, 417 (2001) (declining to allow a challenger "to assert new substantive arguments attacking . . . the judgment when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it"); *Delta Air Lines, Inc.* v. *August*, 450 U.S. 346, 362 (1981); *Dothard* v. *Rawlinson*, 433 U.S. 321, 323 n.1 (1977).

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[6] The waiver at oral argument was carefully considered. Judge Henderson had earlier asked an attorney from the FEC a question about BCRA § 211, and he responded: "They haven't challenged that. There's been no briefing on that. That's not part of their lawsuit." Tr. at 316 (Mr. Kolker). In response to Judge Henderson's question quoted above, Mr. Starr responded: "I need to double-check our list of provisions . . . . If it deserves to be challenged, we will challenge it. (Laughter)." *Id.* at 341. Following a 15-minute recess during which plaintiffs' counsel conferred among themselves, Mr. Baran reported back that "[w]e are not challenging section 211[.]" *Id.* at 342.

B. The heart of Section 214 is Congress's repeal of what it deemed to be an errant FEC rule defining "coordination" between a candidate or party and an outside spender, with instructions to the agency to go back to the drawing board and prepare new regulations. This Court and Congress have long recognized that, to prevent evasion of the campaign finance laws through "wink or nod" arrangements, "coordination" must be defined in a broad and realistic manner. *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 442 (2001) (*Colorado II*); *see also Buckley* v. *Valeo*, 424 U.S. 1, 46-47 & n.53, 78 (1976) (per curiam).

In December 2000, however, a divided FEC promulgated new regulations redefining "coordination" much more narrowly in the context of "general public political communications." *See* 65 Fed. Reg. 76138 (Dec. 6, 2000); *see also* 66 Fed. Reg. 23537 (May 9, 2001) (final rule and effective date); 11 C.F.R. § 100.23 (2002), *repealed by* BCRA § 214(b). The FEC's December 2000 rules provided in material part that coordination could be found between a candidate and a third party only where the third party's communication was "created, produced or distributed" (1) "[a]t the request or suggestion of the candidate," (2) after the candidate "has exercised control or decision-making authority" with respect to the communication, or (3) "[a]fter *substantial discussion or negotiation ... the result of which is collaboration or agreement*" between the third party and the candidate. 11 C.F.R. § 100.23(c)(2)(i)-(iii) (emphasis added).

The new rules drew immediate and extensive criticism both on and off the Commission. A recurrent complaint was that the rules were "far too narrowly drafted and [would] make evasion of [FECA] commonplace"—for example, through the use of inside information by consultants and employees who could achieve *de facto* coordination through informal means while purporting to avoid the more formal arrangements that triggered coverage under the FEC rules.[7] Section 214 followed directly from these criticisms. Section 214(a) repeals the Commission's former rules, effective December 22, 2002; (b) provides that the Commission "shall promulgate new regulations on coordinated communications" addressing at a minimum four specific situations;[8] and (c) directs that the new rules "shall not require agreement or formal collaboration to establish coordination."

Rather than await the product of the mandated FEC rulemaking (which would, of course, be subject to judicial review under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*), appellants flocked directly to the three-judge district court to insist that it would be impossible for the new, not-yet-drafted coordination rules *ever* to comply with the First Amendment. Meanwhile, the Commission proceeded with its coordination rulemaking, as directed by Congress. The FEC issued its Notice of Proposed Rulemaking on September 24, 2002, received written comments and held a public hearing in October, and adopted its replacement rules on December 5—the very day of oral argument on appellants' challenge to Section 214 in the district court. The Commission transmitted its new rules to Congress on December 18 and published them in the *Federal Register* on January 3, 2003. *See* 68 Fed. Reg. 421 (detailing rulemaking history). Many of the appellants participated actively in the rule-making (as did many of the intervenor-appellees).[9]

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[7] Statement of Reasons of Commissioner Thomas and Chairman McDonald in *In re The Coalition, et al.*, MUR 4624, at 8, 12 (FEC Sept. 7, 2001); *see also* Statement of Reasons of Commissioners Thomas and McDonald in *In re Republicans for Clean Air*, MUR 4982, at 9-10 (FEC Apr. 23, 2002); 148 Cong. Rec. 2144-45 (daily ed. Mar. 20, 2002) (statement of Sen. Feingold).

[8] Section 214(c) directs the Commission to address (a) "payments for the republication of campaign materials"; (b) "payments for the use of a common vendor"; (c) "payments for communications directed or made by persons who previously served as an employee of a candidate or a political party"; and (d) "payments for communications made by a person after substantial discussion about the communication with a candidate or a political party."

The district court correctly held appellants' challenge to the rulemaking mandate of Section 214 to be nonjusticiable. *See* JSSA 144-56sa (per curiam). Whether evaluated under principles of standing, ripeness, finality pursuant to 5 U.S.C. § 704, exhaustion of administrative remedies, or subject-matter jurisdiction, appellants' challenges to Section 214's rulemaking provisions were not properly before the three-judge district court.[10] To begin, appellants lack Article III standing, for they can have suffered no "specific objective harm" from a mere congressional instruction to the FEC to rewrite its coordination rules. JSSA 145sa (per curiam); *see generally* JSSA 145-48sa (per curiam). Until final rules were in place, it was entirely speculative whether any particular conduct in which an appellant wished to engage might be covered by the revised rules or not.

It is also well-settled under principles of ripeness, finality, and exhaustion that litigants may not attempt to end-run congressionally established rulemaking procedures for resolving an issue by seeking to litigate that issue directly in court. *See* JSSA 148-56sa (per curiam); *Nixon* v. *Administrator of Gen. Servs.*, 433 U.S. 425, 430, 437-39 (1977) (matters subject to pending rulemaking were "not ripe for review," because final rules might "eliminate, limit, or cast [the constitutional claims] in a different light")

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[9] Portions of the new coordination rules have been challenged under the APA by Reps. Shays and Meehan. *See Shays* v. *FEC*, Civ. Action No. 02-CV-1984 (D.D.C.). To our knowledge, that is the only challenge that has been brought against the new coordination rules.

[10] Some of these challenges are also now moot. For example, appellants argued below that Section 214(b), which repealed the FEC's former rules, "substantially aggravated the constitutional violation" by creating a period when there were no definitional rules in place. *See* JSSA 144sa (per curiam). As the district court majority held, the Commission's promulgation of new rules rendered this "aggravation" claim moot. JSSA 136sa n.88, 144sa (per curiam).

(internal quotation marks omitted).[11] These ripeness principles apply fully in the First Amendment context. *See* JSSA 145sa, 149-55sa (per curiam); *Renne* v. *Geary*, 510 U.S. 312, 320-324 (1991).[12]

In addition, any challenge to the outcome of the FEC rulemaking on coordination must be brought in a single-judge district court in an action for judicial review under the APA. BCRA's special jurisdictional grant "does not extend to the consideration of FEC regulations." JSSA 144sa (per curiam); *see* JSSA 155-56sa (per curiam). The special jurisdictional provisions of BCRA Section 403(a) for a three-judge district court are limited to "any action . . . brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act." Those provisions do not extend the subject-matter jurisdiction of the three-judge district court to challenges to administrative rules promulgated pursuant to BCRA. Thus, there is no basis for challenging such rules outside the usual APA framework. *See also FCC* v. *ITT World Communications, Inc.*, 466 U.S. 463, 468 (1984) ("[l]itigants may not evade" statutory procedures for judicial review of matters committed to agency's rulemaking process by commencing *de novo* actions in district court).[13]

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[11] *See also New Mexicans for Bill Richardson* v. *Gonzales*, 64 F.3d 1495, 1504 n.5 (10th Cir. 1995); *Public Citizen Health Research Group* v. *FDA*, 740 F.2d 21, 29 (D.C. Cir. 1984).

[12] *See also Martin Tractor Co.* v. *FEC*, 627 F.2d 375, 378 (D.C. Cir.) (affirming dismissal of First Amendment challenges to allegedly ambiguous FECA language as "nonjusticiable as a constitutional matter and inappropriate for adjudication as a prudential matter," given the opportunities for clarification through the FEC), *cert. denied*, 449 U.S. 954 (1980); *Clark* v. *Valeo*, 559 F.2d 642, 647 (D.C. Cir.) (per curiam) (judicial review of various FECA issues inappropriate "because the unripeness of the action is so pervasive"), *aff'd*, 431 U.S. 950 (1977).

[13] Judge Henderson appears to have concluded that BCRA's jurisdiction should be extended to the FEC's rules on the theory that "extreme" hardship would otherwise result "because ordinary APA review of the regulations could take several months or even years." JSSA

Appellants have argued that they are not required to await the outcome of the FEC's rulemaking because (they contend) the First Amendment *requires* an outright "agreement" for any expenditure to be treated as "coordinated," whereas Section 214(c) *prohibits* the FEC from requiring an agreement to demonstrate "coordination." *See* JSSA 136-37sa & n.89, 146sa (per curiam); McConnell J.S. 16. The district court majority dissected this argument at length and correctly found it to be "inconsistent with the holdings of *Buckley* and its progeny." JSSA 146sa (per curiam); *see also* JSSA 138-43sa (per curiam). As the district court stressed, *Buckley* expressly endorsed treating expenditures made "'at the request or suggestion of the candidate or his agent[ ]' " as "coordinated," a standard that clearly does *not* "equate to agreement." JSSA 139sa (per curiam) (quoting *Buckley*, 424 U.S. at 47 n.53) (internal citations omitted); 143sa (per curiam).[14]

It is therefore untenable to assert that any provision of Section 214 *requires* the FEC to violate any constitutional principle articulated in this Court's decisions applicable to coordinated expenditures. Accordingly, appellants have no basis for disregarding the rulemaking procedures established by Congress, which may well have resolved many if not all of their practical concerns without the need for litigation on this issue. *See* JSSA 148sa, 150-52sa, 155-56sa (per curiam). Of course, if appellants are dissatisfied with the outcome of the FEC's rulemaking, they can challenge the Commission's coordination rules in an action

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396sa. As the majority explained, that position does not take account of the fact that expedition and interim relief are available in APA challenges. JSSA 155-56sa & n.98-99 (per curiam). In any event, that argument cannot supply subject-matter jurisdiction to review rulemaking issues where no such jurisdiction has been granted by Congress.

[14] *See also Colorado Republican Fed. Campaign Comm.* v. *FEC*, 518 U.S. 604, 614 (1996) (plurality opinion) (*Colorado I*); (recognizing need to reach "general . . . understanding[s]"); *Colorado II*, 533 U.S. at 442 (same, with respect to "wink or nod" arrangements).

under the APA, in which they may raise both constitutional and statutory challenges to those rules.[15]

C. Section 214 makes two other minor changes to FECA outside the rulemaking context. Any challenges to those provisions that might be raised by appellants are insubstantial.

First, Section 214(a) extends FECA's longstanding regulation of coordination with candidates and candidate committees to include coordination with any "national, State, or local committee of a political party" as well. As the district court majority explained, Congress simply took the "same definition [that] has been applied to expenditures coordinated with political candidates for over 25 years," and applied it to coordination with parties. JSSA 135sa (per curiam). In doing so, Congress acted on the need to avoid circumvention of FECA's contribution limits, a necessity long recognized by both this Court and Congress.[16] Congress has found that, to enforce those contribution limits effectively, it is necessary to apply the coordination regulations to coordination with both candidates and parties. There is no basis in law or in the record to set aside this congressional judgment. As the district court majority concluded, "[appellants] have provided no explanation as to why the application of this coordination formula to the context of political parties chills political speech any more than when applied to expenditures coordinated with political candidates." JSSA 137sa (per curiam).

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[15] Judge Henderson expressed the view that vague coordination standards could threaten to interfere with protected lobbying and information-gathering activities. *See* JSSA 280-86sa, 386-96sa. Again, that point is a question for APA review of the FEC's coordination regulations rather than this litigation. Moreover, the sponsors of BCRA repeatedly emphasized that any rule that sought to find "coordination" based on genuine lobbying activities would be contrary to Congress's intent. *See, e.g.*, 148 Cong. Rec. S2145 (daily ed. Mar. 20, 2002) (statement of Sen. McCain). Consistent with that legislative intent, the FEC's new rules contain a safe-harbor provision for "responses to inquiries about legislative or policy issues." 68 Fed. Reg. at 455 (quoting new 11 C.F.R. § 109.21(f)). Thus, as the district court majority explained, appellants' claims that their genuine lobbying activities could be in jeopardy are speculative at best, and are insufficient to meet Article III standing requirements. *See* JSSA 147sa n.95. (per curiam).

[16] *See Colorado II*, 533 U.S. at 447, 464; *Buckley*, 424 U.S. at 46-47 & n.53, 78; 2 U.S.C. § 441a(a)(7)(B)(i).

Second, appellants may raise a First Amendment constitutional challenge to BCRA Section 214(d). As the district court majority explained, however, that provision simply amends 2 U.S.C. § 441b to bring its definitions into alignment with other sections of FECA. JSSA 156-57sa (per curiam). Thus, any challenge to Section 214(d) is likewise insubstantial and does not warrant this Court's plenary consideration.

CONCLUSION

In No. 02-1674, the Court should summarily dispose of appellants' challenges to Sections 211, 212, and 214. In other respects, the Court should note probable jurisdiction of the appeals in No. 02-1674 and No. 02-1675 and set those cases for plenary review.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

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QUESTION PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The question presented by this appeal is as follows:

Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

IN THE SUPREME COURT OF THE UNITED STATES

No. 02-1675

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported. See J.S. App. 4a.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-3a) was filed on May 5, 2003. Appellants' jurisdictional statement was filed on May 6, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

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[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in Federal Election Commission v. Mitch McConnell, United States Senator, No. 02-1676.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court rejecting appellants' constitutional challenges in part. As of this date, three other jurisdictional statements arising out of the same district court judgment are pending before this Court. See Mitch McConnell, United States Senator v. Federal Election Commission, No. 02-1674; Federal Election Commission v. Mitch McConnell, United States Senator, No. 02-1676 (see note 1, supra); John McCain, United States Senator v. McConnell, United States Senator, No. 02-1702.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, supra) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

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[2] Contemporaneously with this response, appellees are filing a motion for expedited briefing schedule applicable to this appeal and to the other pending appeals (see p. 2, supra) from the district court's judgment in this case.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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IN THE

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FEDERAL ELECTION COMMISSION, *et al.*
Appellants

vs.

SENATOR MITCH MCCONNELL, *et al.*
Appellees.

On Appeal from the United States
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Joint Motion to Affirm Summarily

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QUESTIONS PRESENTED

Prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, minors had the right to contribute to the committees of political parties and to candidates for federal office, subject to the same limitations that also applied to persons that had attained their majority. Section 318 of BCRA completely prohibits donations to committees and to candidates by minors. In the view of these Appellees, all of whom are minors, the question presented is:

> Whether the three judge district court erred in its judgment that the absolute ban on donations by minors was unconstitutional?

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In the Supreme Court of the United States

No. 02-1676

FEDERAL ELECTION COMMISSION, *et al.* *Appellants*

vs.

SENATOR MITCH MCCONNELL, *et al.*, *Appellees.*

On Appeal from the United States District Court
for the District of Columbia

Joint Motion to Affirm Summarily

The minor Appellees, by their next friends, move this Court pursuant to Supreme Court Rule 18.6 for an Order summarily affirming the judgment of the three judge court of the United States District Court for the District of Columbia, which held that Section 318 of BCRA is unconstitutional.

As set forth within, the questions regarding the constitutionality of Section 318 of BCRA are so well-settled in the precedents of this Court that plenary review of the judgment striking Section 318 as unconstitutional is unwarranted.

STATEMENT OF THE CASE

1. Section 318 of the Act–

The Federal Election Campaign Act ("FECA") directly prohibits any person from making political contributions in the name of another. Title 2 U.S.C. § 441f (2002). That prohibition encompasses contributions made by a parent in the name of their minor child. FECA also directly prohibits any person from exceeding the maximum permitted political contribution. 2 U.S.C. § 441a. That limitation prevents the parent or guardian of a minor child from exceeding limitations on contributions by the ruse of donating in the name of their minor child. Thus, prior to the enactment of BCRA, federal law already prohibited circumventing campaign limits by making gifts in the names of children.

There was no evidence to suggest the need for such a flat ban. In fulfillment of its statutory enforcement responsibilities, the Federal Election Commission ("FEC") has investigated only the barest handful of instances of parental donations in the names of minor children.[1] Moreover, Congress made no factual findings in BCRA regarding problems related to donations by minors to the committees of political parties or to candidates in BCRA. Section 318 was added to the Act while the proposal was pending in the House. No explanation for the provision was offered during debate there.[2] The only explanation offered for the ban came during the Senate debate on the Act.[3] There, Senator John McCain stated that the ban was needed to address the problem of parental circumvention of donation limitations by giving contributions in the names of their minor children.[4]

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[1] The Federal Election Commission admitted in discovery below that one percent or fewer of its investigatory "Matters Under Review" "involved covered political contributions by minors or by parents made in the name of the minor children."

[2] The Appellants acknowledged below the absence of any explanation related to this provision in the House debates on BCRA.

[3] *See* 148 Cong. Rec. S2145-46 (daily ed. March 20, 2002) (statement of Sen. McCain).

Nonetheless, when it enacted BCRA, Congress included Section 318, which amends FECA by adding to it a new section 324, prohibiting anyone seventeen years of age or younger from making any contribution to a candidate, or a contribution or donation to a national or state political party committee:

> An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution to a committee of a political party.

Title III, § 318, H.R. 2356, 107th Cong. (2002) (enacted); FEC Jurisdictional Statement at 71a. Judge Henderson, in her separate opinion below, described Section 318 as "fall[ing] into the category of 'who knows where it came from.'" *See* Op. of Henderson, J., at 326; Supplemental Appendix to Jurisdictional Statements at ___ ("Supp. App.").

2. The Decision Below–

The three-judge panel unanimously agreed that Section 318 violated the Constitution:

> Section 318 prohibits donations by minors to federal candidates, or to a committee of a political party. All three judges agree that this section is unconstitutional.

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[4] *See* 148 Cong. Rec. S2145-48 (daily ed. March 20, 2002) (statement of Sen. McCain).

> Each judge writes a separate concurrence setting forth his/her reasoning as to this section.

Per Curiam Op. at 11; Supp. App. ___. As indicated, all three judges wrote separately to explain their reasoning for that conclusion.

Judge Henderson concluded that whether analyzed under strict scrutiny or under "*Buckley* scrutiny," Section 318 was unconstitutional. In Judge Henderson's view, the Appellants' arguments for the constitutionality of Section 318 failed for two principal reasons:

> First, section 318 does not serve any governmental interest, much less a "sufficiently important" or "compelling" one.
>
> * * * *
>
> Second, even if section 318 served to prevent actual or apparent corruption of federal candidates in a material way not served by existing law, the provision could not be sustained because—far from being "closely drawn" or "narrowly tailored"—it is grossly overbroad.

Op. of Henderson, J. at 328, 331; Supp. App. ___-___. In addition, Judge Henderson found that the evidence proffered to justify Section 318 as a tool to prevent corruption "is remarkably thin." Op. of Henderson, J. at 329, Supp. App. ___.

Judge Kollar-Kotelly, like Judge Henderson, found it unnecessary to decide between strict scrutiny or "*Buckley* scrutiny." In Judge Kollar-Kotelly's view, "Defendants have failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important government interest." Op. of Kollar-Kotelly at 611, Supp. App. ___. *See also id.*; Supp. App. ___ ("the evidence presented is insufficient to support government action that abridges constitutional freedoms").

Judge Leon, while concurring in the conclusion of Judges Henderson and Kollar-Kotelly that Section 318 was unconstitutional, wrote "only to explain why [he] believe[d] th[e] Court should evaluate this provision under the strict-scrutiny standard of review." Op. of Leon, J., at 106; Supp. App. ___.

3. Facts Relevant to the Challenge to Section 318

a. *Echols v. FEC*

Appellees Emily Echols, Daniel Solid, Hannah and Isaac McDow, Jessica Mitchell, and Zachary White are citizens of the United States. Echols, Solid and White reside in Georgia, the McDows reside in Alabama, and Mitchell resides in Florida. Each of them is aged seventeen years or younger. These Appellees are seriously interested in government, politics, and campaigning. Their interest is demonstrable, having, amongst them, participated in campaigns as volunteers, assembled signs, distributed literature, walked precincts, even traveling great distances to campaign door-to-door for candidates they support. In such ways and others, they have shown their commitment to using their rights to freedom of association and expression to effect political changes in accord with their beliefs and opinions.

These minors possess monies that they have earned – either by working outside their homes or by performing chores around their homes for pay – or that they received as gifts. No portion of these monies consists of funds given to them for the purpose of making political contributions. The parents of the Echols plaintiffs are aware of the federal campaign laws and the restrictions they impose; and they have obeyed those laws.

For these young citizens, contributing money to candidates and to the committees of political parties are forms of expression of support for those candidates and committees. Moreover, by making such contributions of money, they have already associated with those selected candidates and committees of political parties. The minors Appellees plan to, and intend to, exercise their rights of political association and expression by making candidate and committee contributions, during their minority, into the future. But for the enactment of Section 318 and its ban on such political contributions by them, they would be free to do so.

b. *McConnell v. FEC*

Appellee Barret Austin O'Brock is a minor living in Louisiana.[5] He declared his general intention to contribute to federal candidates in future elections, including in the 2002 and 2004 election. Specifically, he stated his intention to contribute at least $20 of his own money (not received from any other person for purposes of the contribution) to John Milkovich, a candidate for U.S. Representative for the Fourth Congressional District of Louisiana, prior to the November 2002 general election. Barret knows candidate Milkovich personally because the candidate was Barret's Sunday School teacher for two years.

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[5] In the court below, Trevor M. Southerland, then a minor, also challenged Section 318. On May 28, 2003, Mr. Southerland attained his majority. Consequently Section 318 no longer deprives him of the rights to freedom of speech and association that he complained of, and vindicated below. Although he has reached his majority, the claim in the *McConnell* litigation was brought by him and by Barret

SUMMARY OF ARGUMENT

The day is long past when America's teenagers and children may be consigned to constitutional steerage, there to "enjoy" all the benefits of third class citizenship. As early as *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), it has been without question that American children are "whole persons" in the constitutional sense. Concomitantly, they possess the same constitutional rights and liberties as adults, even if, in certain circumstances, such as the special case of public schools, the contours of those rights vary slightly from the rights of their adult counterparts. *See Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969).

O'Brock, who is still in his minority, and by the plaintiff minors in the *Echols* litigation, all of whom are also still in their minority. Consequently, the apparent mootness of Mr. Southerland's claim does not render moot the judgment below that Section 318 is unconstitutional; nor does his majority warrant an Order vacating the injunction against enforcement of Section 318 as to those Appellees still in their minority.

Nonetheless, in a stunning strike against those rights, Congress enacted the complete ban embodied in Section 318. All three of the judges below agreed that Section 318 was unconstitutional. A majority – Judges Henderson and Kollar-Kotelly – agreed that it was unnecessary to decide whether a more or less stringent standard of review applied because of the flagrant unconstitutionality of the flat ban. Judge Leon did not disagree with that view, but instead focused on the reasons for applying strict scrutiny to Section 318.

The flat ban on donations by minors to political party committees and to candidates flouts several constitutional norms relevant to laws affecting associational freedoms and expression. In accord with this Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 24-25 (1976), the ban on all political contributions by minors is subject to the closest scrutiny.[6] But even if the ban is subjected to the lesser scrutiny applied to donation limitations in *Buckley*, the court below correctly concluded that it could not withstand such scrutiny.

The ban is severely flawed. It is not drawn in service of a sufficiently important government interest. Even assuming a sufficiently compelling justification for Congress to act, the ban on political contributions by minors is not drawn narrowly in service of the government interests at stake.

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[6] As explained in *Buckley*, 424 U.S. at 16-18, Section 318 must be subjected to something more than the scrutiny embodied in *United States v. O'Brien*, or the time, place and manner analysis employed in the Public Forum cases, *e.g.*, *United States v. Grace*, 461 U.S. 171 (1983).

ARGUMENT

I. SECTION 318 VIOLATES MINORS' CONSTITUTIONAL RIGHTS

As a matter of first principles, a complete ban on political contributions strikes directly at the heart of the First Amendment. As this Court explained, in addressing statutory ceilings on the amount of personal contributions: "The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). Nothing in *Buckley* or its progeny suggests that the injury of such a flat prohibition on even token contributions is felt any less keenly by, or inflicts less grievously a wound upon the rights of, citizens of the United States who are in their minority.

A. MINORS POSSESS FIRST AMENDMENT RIGHTS OF FREEDOM OF ASSOCIATION AND SPEECH.[7]

If, as this Court has said, student do not "shed their Constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 511 (1969), then there can be no question that they possess those rights before they pass through those gates. Here, as with analogous contributions by their adult counterparts, the political contributions of minors are, at a minimum, an exercise of the constitutional right to political association. *Buckley*, 424 U.S. at 15 ("The First Amendment protects political association as well as political expression;". "[T]he First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas") (citations and internal quotation marks omitted). For these minors, contributions to candidates and committees of political parties serve to express support for and association with selected candidates and committees.[8]

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[7] This case does not address the lawful authority of parent or guardians over minors in their care and under their control, but rather, it addresses the imposition by Congress of a complete ban on the exercise by minors of rights of speech and association.

In *Bellotti v. Baird*, 443 U.S. 622, 634 (1979), the Court noted that government intrusion into a minor's fundamental rights may be justified based on "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." None of those special circumstances, however, is implicated by this statutory restriction on core First Amendment rights.

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[8] Of course, special circumstances exist in which the exact dimensions of the constitutional rights enjoyed by minors vary from those of their adult counterparts. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975). Most of the cases discussing the questions related to minors' First Amendment rights, for example, arise in the special environment of the school. But even there, this Court has stated that "[s]tudents in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect[.]" *Tinker*, 393 U.S. at 511. Other special circumstances include, for example, restricting minors' access to obscene materials, *see, e.g., Ginsberg v. New York*, 390 U.S. 629, 637-38 (1968); restricting minors' access to abortion, *see, e.g., Bellotti v. Baird*, 443 U.S. 622, 634 (1979). *Cf. Dallas v. Stanglin*, 490 U.S. 19, 24-25 (1989) (upholding City's adoption of special use classifications for dance halls to prevent juvenile crime and victimization) (classification subject to rational basis scrutiny because no fundamental right impinged or suspect category created).

The Government makes the novel argument, see Jurisdictional Statement at 28, FEC v. McConnell (docketed May 15, 2003), that "any First Amendment interests that minors may have in participating in the financing of federal elections is substantially limited by the fact that minors have no constitutional right to vote in such elections." Unsurprisingly, the Government does not rely on any decision of this Court (or, for that matter, of any other court) for this proposition. It is insupportable and without merit. While it is true that minors do not possess the right to vote, it is just as true that they pay taxes and possess the right to freedom of speech and of association. No limiting principle is enunciated in the Government's standard to prevent the suppression of rights of expression in a variety of circumstances.

In the absence of such a limiting principle, the most unacceptable and unconscionable results follow in any case where a government program or action affects selected groups or individuals, but leaves unaffected others who may, nonetheless, hold views or opinions that they would express about the Government's action. Women, for example, are not required to register for selective service. In this sense, women are not affected by the registration requirement.

According to the Government's approach, the federal government could suppress the speech and associational rights of a group of mothers of draft-eligible young men. Other examples clamor for attention. Men, using the Government's rationale, could be silenced in either their support for or opposition to abortion rights, because, after all, men cannot become pregnant. All persons in the United States who are not the descendants of African Americans once held in involuntary servitude could be silenced on the question of whether a government program of reparations should be undertaken.

The Government's rationale fails to account for the terms of the First Amendment, which do not admit of an entire exception from protection for minors. Nor does the Government seek to square its approach with the decisions of this Court that have recognized that minors are persons in the constitutional sense and possess rights under the First Amendment. The Government casually ignores the certainty that even if minors are not protected from discrimination on the basis of age in voting, every federal election in this Nation is a matter of significance to them and to their future. The examples cited above, and the multitude more that can readily be drawn from a topical index of cases decided by this Court or the Popular Names Table of United States Statutes, adequately dispose of the simplistic "they can't vote so they don't count" approach taken by the Government.

B. There Is No Sufficiently Compelling Governmental Interest to Justify the Denial of Minors' Constitutional Rights of Speech and Association.

To discern whether Congress has gone too far in banning political contributions by minors, it is essential to ask what Congress sought to accomplish. Apparently, Congress sought to address parental circumvention of donation limitations and channeling of gifts. In the court below, the Appellants offered various justifications in defense of Section 318, including avoiding corruption and the appearance of it, assuring the legitimacy of the electoral system, preventing circumvention of campaign contribution limits, facilitating deterrence and detection of violations of federal campaign limitations, and restoring public faith in the system.

The concern about circumvention of donation limitations by wealthy parents using the names of their minor children – to which Senator McCain adverted on the Senate floor[9] – is unsupported by any substantial evidence. Both Judge Henderson and Judge Kollar-Kotelly took note of the "thinness" of the evidence supporting the need for Section 318. Judge Henderson found "the government's evidence of corruption-by-conduit . . . remarkably thin . . . ." Op. of Henderson, J., at 329; Supp. App. ___. Judge Kollar-Kotelly noted, the Government "failed to present sufficient evidence to establish that parents' use of minors to circumvent campaign finance laws serves an important governmental interest . . . ." Op. of Kollar-Kotelly, J., at 611; Supp. App. ___. In light of that failure, Judge Kollar-Kotelly concluded, "the minimal evidence presented does not establish that circumvention of campaign finance laws by parents of minors supports the required governmental interest." Op. of Kollar-Kotelly, J., at 612; Supp. App. ___.

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[9] *See* nn. 3-4 , *supra* and accompanying text.

Even assuming that a statutory regimen may have been necessary to remediate the unsubstantiated problems of parental circumvention and excess giving, Section 318 is unjustifiable. A statutory ban on political contributions by minors burdens substantially more political association and speech than necessary precisely because its proscriptions apply to individuals who never have engaged in prior unlawful behavior.

The minors' donations to committees and candidates embody classic exercises of the right to freedom of political association and freedom of speech. No *valid* government interest supports this ban. Such a complete ban was not at issue in *Buckley*. Instead, because FECA permitted a contribution in some amount, this Court concluded that the ceiling on such contributions survived scrutiny. Here, Congress utterly prohibits even a token donation. That complete prohibition, to the contrary of the FECA *limitations* at stake in *Buckley*, encompasses so much speech and association unrelated to any regulable evil that it is "substantially broader than necessary to achieve the interests justifying it." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 n.7 (1989).

Nor can concerns about abuses by a few parents, who might circumvent restrictions on their own donations by using their minor children as surrogates, justify a flat ban on contributions by minors. Such circumvention is already illegal under FECA provisions predating BCRA and not challenged in this litigation. *See* Title 2 U.S.C. §§ 441a and 441f (2002). Moreover, the gift of money by a minor need not come *from* parental sources or *at* parental direction. For example, Jessica Mitchell, one of the minor Appellees in this case, donated money to a candidate for the United States House of Representatives that she had earned from a small pet care business that she and a friend started in their neighborhood. Each of the other minors, likewise, has monies that were not received as part of a scheme or plan of their parents to circumvent FECA's limitations on contribution amounts. Yet donations by the minor Appellees are barred by Section 318.

Oddly absent from the justifications proffered by the Appellants below is any assertion that money from minors is, in its essence, corrupting or evil. In fact, the proffered justifications exclusively focus on the alleged abuses of parents, which abuses already are directly prohibited by FECA. Moreover, the Government's interest in preventing corruption or the appearance of corruption is no greater (and arguably much less) with respect to minors than with respect to adults. If any contribution is corrupting, then all contributions should be banned: contributions of all sizes, contributions from all sources.

Plainly, the government interest in preventing parents from circumventing contribution limits by channeling additional contributions through their children is not sufficiently compelling to justify Section 318.

C. Section 318 Is Not Narrowly Tailored to the Asserted Governmental Interest.

Two aspects on the statute are significant to an appropriate constitutional analysis of the fit between the asserted government purposes of the ban and the means chosen to serve them. First, the ban applies to individual minors whether or not their exercise of associational expression and free speech have threatened the interests identified by the Appellants. These minors are barred from symbolically expressing their association with candidates and committees by even token donations despite the utter lack of evidence that these minors have subverted campaign finance limitations, or that their parents or guardian have used them for that purpose. The ban applies to all gifts by minors even though there is no reason to conclude that such gifts, taken individually or in the aggregate, either by their nature or practice, works injury to the identified government interests.

Second, unlike the direct bans on giving contributions in the name of another, 2 U.S.C. § 441f (2002), and on exceeding limitations on contribution amounts, 2 U.S.C. § 441a(a)(1)(A), the ban on contributions by minors works a *prophylactic* suppression of constitutionally protected rights of minors. As this Court has repeatedly admonished, however, "broad prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 458 (1963).

In *Buckley*, of course, this Court upheld personal contributions *ceilings*, not a complete ban. A *ban* on such gifts could not, however, pass muster. In fact, one of the signal justifications offered in *Buckley* for a contribution ceiling was that a ceiling left donors free to make some donation:

> A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution . . . .

424 U.S. at 21. A *ban* that entirely prevents a minor from giving "to a candidate or campaign," does not "permit[] the symbolic expression of support evidenced by a contribution."

What is called for in this analysis is an examination of the fit between purpose and means. For example, in *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984), the Court upheld an ordinance that prohibited the posting of signs on public property, but only after concluding that the ordinance "responds precisely to the substantive problem [of visual blight] that concerns the City." That cannot be said of the contribution ban; it closely resembles the anti-littering law struck down in *Schneider v. State*, 308 U.S. 147 (1939). There, as here, the state "could have addressed the substantive evil without prohibiting expressive activity," or adopting a "prophylactic rule." *Taxpayers for Vincent*, 466 U.S. at 810. Similarly, *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), and *Clark v. Community for Creative Nonviolence*, 468 U.S. 288 (1984), also assume a fit between means and ends that is lacking here. Thus, in *Ward*, an ordinance requiring that city employees operate sound amplification equipment was upheld because it directly advanced the city's interest in controlling noise. 491 U.S. at 800. Likewise, in *Clark*, a regulation barring protesters from sleeping in a park was upheld because it "narrowly focused on the Government's substantial interest in maintaining the parks in the heart of our Capitol in an attractive and intact condition." 468 U.S. at 296.

These cases all show that Congress must craft its statutes narrowly when regulating constitutional rights, and must limit its interests to those unrelated to the suppression of expression. *Buckley*, 424 U.S. at 17-18. Below, the Appellants identified the interests supposedly served by the statute. Unfortunately, the ban is not closely drawn to promote those interests. Instead, it focuses directly on expressive activities. It thus burdens substantially more speech than necessary to accomplish the state's goal and cannot be sustained.

The interests identified by the Appellants go to abuses by persons other than minors. But the ban targets constitutional exercises by minors. Consequently the ban does not target the "evil" – namely, circumvention or corruption – that motivated Congress to enact it. *Cf. Frisby v. Schultz*, 487 U.S. 474, 485 (1988) ("complete ban can be narrowly tailored . . . only if each activity within the proscription's scope is an appropriately targeted evil"). Of course, Congress can address circumvention and corruption problems directly; indeed, it already has done so with its enactment of 2 U.S.C. §§ 441a and 441f (2002).

Neither the minor Appellees nor their parents have challenged those existing provisions of FECA. Those unchallenged and existing restrictions directly serve the interests that are, at best, only obliquely served by Section 318's ban on political contributions by minors. Instead, the minors' ban goes further and in a different direction entirely. Section 318 prohibits minors' political contributions, even when such contributions are not made in circumvention of FECA's contribution limits. It prohibits contributions of emancipated minors. It prohibits contributions by orphaned minors. And it prohibits contributions of those minors who, with consent of their parents, have enlisted in the United States Armed Forces.[10]

These minors "are not quibbling over fine-tuning of prophylactic limitations, but are concerned about wholesale restriction of clearly protected conduct." *FEC v. National Conservative PAC*, 470 U.S. 480, 501 (1985). The First Amendment freedoms put in jeopardy by Section 318 are supremely precious. This Court has explained, "because First Amendment freedoms need 'breathing space' to survive, government may regulate in this area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). While this Court has instructed that "[p]recision of regulation must be the touchstone" when regulating activities protected by the First Amendment, Section 318 apes that precision and instead broadly bans the exercise of pristine constitutional freedoms.

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[10] *See* Title 10 U.S.C. § 505 (2002) (authorizing enlistment of minors).

Ready and less burdensome alternatives exist to ensure that current election laws are not manipulated by means of the channeling of funds through minors. In fact, the Federal Election Commission never recommended such a ban to Congress, preferring instead to suggest less drastic means.[11]

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[11] The FEC has proposed to Congress that it adopt legislation related to contributions by minors to federal candidates and committees of political parties. The FEC has submitted Annual Reports to Congress and to the President as required by law. Those Reports provide information about the regulatory and enforcement activities of the Commission, and they also communicate proposals for legislative action.

In its 1992 Annual Report, the FEC recommended that Congress establish a minimum, but unspecified, age for contributors. *See* 1992 Annual Report at 64. In support of that recommendation, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In each of its Annual Reports for the years 1993-98, the FEC recommended that Congress establish a presumption that contributors below age 16 are not making contributions on their own behalf. *See, e.g.*, 1993 Annual Report at 50. The FEC explained, "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

In its 1999 and 2000 Annual Reports, the FEC recommended that Congress establish a minimum age of 16 for making contributions.

Going beyond the all-or-nothing approach of the ban, Congress could have established a family contribution cap or employed a rebuttable presumption regarding the voluntariness of minors' contributions.[12] In fact, Congress

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See 1999 Annual Report at 50; 2000 Annual Report at 43. Regarding this proposal, the FEC stated: "The Commission has found that contributions are sometimes given by parents in their children's names. Congress should address this potential abuse by establishing a minimum age of 16 for contributors, or otherwise provide guidelines ensuring that parents are not making contributions in the name of another." *Id.*

12.The States have undertaken such less burdensome regimens of regulation, by which minors are permitted to continue making donations while the putative harms of circumvention and corruption are avoided by less draconian means. At least fourteen States have enacted less cumbersome and prohibitive regimes for the regulation of political donations by minors to candidates for state election:

Alaska : A minor may not contribute money or anything of value given to the child by a parent for that purpose. *See* 2 Alaska Admin. Code 50.258 (2002).

Arizona: A contribution from an unemancipated minor is treated as a contribution from his parents. *See* A.R.S. § 16-905 (2001).

Arkansas: When a person provides his/her dependent child with funds to make a contribution to a candidate, the contribution shall be attributed to such person for purposes of applying the contribution limit. *See* A.C.A § 7-6-205 (2002).

Connecticut: No individual who is less than 16 years of age shall make a contribution or contributions, in excess of thirty dollars. *See* Conn. Gen. Stat. § 9-333m (2001).

Florida: No unemancipated child under the age of 18 years may

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make a contribution to any candidate or political committee in excess of $100. *See* Fla. Stat. § 106.08 (2002).

Hawaii: A contribution by a dependent minor is reported in the name of the minor but counts against the contribution of the minor's parent or guardian. *See* HRS § 11-204 (2002).

Kansas: Contributions made by unemancipated children under 18 years of age are considered contributions made by the parent or parents of such children. *See* K.S.A. § 25-4153 (2001).

Kentucky: Minors' contributions may not exceed $100. *See* KRS § 121.150.

Massachusetts: Persons under age 18 may not contribute more than $25 per calendar year, in the aggregate. *See* Mass. Ann. Laws ch. 55, § 7 (2002).

Michigan: A contribution of expenditure by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution limitations of the minor's parent or guardian. *See* MCLS § 169.253 (2002).

Oklahoma: For the purposes of limitations on contributions, those made by husband, wife and all unemancipated children under the age of 18 are aggregated to a single family unit. *See* 21 Okl. St. § 187.1 (2002).

South Carolina: Contributions by unemancipated children under 18 years of age are considered contributions by their parents. *See* S.C. Code Ann. § 8-13-1330 (2001).

Texas: A contribution by a child under the age of 18 of an individual is considered to be a contribution by the individual. *See* Tex. Elec. Code § 253.158 (2002).

West Virginia: Minors under the age of 18 may make a contribution if (a) the decision to contribute is made knowingly and could simply require the FEC and the Attorney General to enforce the current restrictions.

II. THE BAN ON CONTRIBUTIONS BY MINORS IS OVERBROAD.

Judge Henderson correctly concluded that Section 318 is unconstitutionally overbroad." Op. of Henderson, J., at 331-33; Supp. App. ___. Section 318 prohibits every contribution of money by a minor to a federal candidate or a committee of a political party. The prohibition applies to servicemen and women who are defending our Nation, 10 U.S.C. § 505 (2002), to emancipated minors, and to minors – such as these Appellees – who possess independence of judgment and separate financial means to make such donations. The ban is not limited to parents or guardians with a history of bad conduct; it assumes that no minor is to be trusted not to abuse his or her rights.

This is a case, not of mere "substantial overbreadth" but of *inherent* overbreadth: "there is no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits." *Secretary of State v. J. H. Munson Co.*, 467 U.S. 847, 865-66 (1984). *See id.* at 864-65 (in case of *inherent* overbreadth, the more demanding "substantial

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voluntarily by the minor child; (b) the funds, goods or services are owned and controlled exclusively by the minor child; (c) the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or not in any other way controlled by another individual. *See* W. Va. Code § 3-8-12 (2002).

overbreadth" test does not apply). This ban "does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of [constitutional] freedom[s]." *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940). Such an "overbroad" law "directly restricts protected expressive activity and does not employ means narrowly tailored to serve a compelling governmental interest." *Munson*, 467 U.S. at 965 n.13. The ban flies in the face of established doctrine:"Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 801 (1988) (internal quotation marks and citation omitted).

III. SECTION 318 VIOLATES THE MINORS' RIGHTS TO EQUAL PROTECTION.

Because Section 318 is a complete prohibition, not merely a limitation on the amount of a permissible contribution, it is subject to strict scrutiny, *see Buckley*, 424 U.S. at 24-25. In addition to the associational freedom and free speech claims that they have presented, Section 318 also violates these Appellees' rights to equal protection guaranteed to them by the Fifth Amendment Due Process Clause. They have been selectively subjected to the burdensome provisions of the ban solely because of the age. Put another way, their exercise of fundamental First Amendment rights is differentially burdened, in an unjustifiable manner, because of their age. Consequently, for this separate reason, Section

318 is subject to strict scrutiny, which it cannot survive.[13]

CONCLUSION

For all the foregoing reasons, the judgment of the District Court below, holding that Section 318 of the Bipartisan Campaign Reform Act is unconstitutional, should be affirmed summarily by this Court.

Respectfully submitted,

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May 30, 2003.

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[13] Because, in most respects, the analysis here would track the analysis applied in Argument I(B) and (C), it is unnecessary to duplicate those arguments here.

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733

No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734

No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753

No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755

No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756

No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675

No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676

No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702

No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740
No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747
No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727
No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733

No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734

No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753

No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755

No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756

No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675

No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676

No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702

No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733

No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734

No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753

No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755

No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756

No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675

No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676

No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702

No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

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Docket for 02-1733

No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734

No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753

No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755

No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756

No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675

No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676

No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702

No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733

No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734

No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753

No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755

No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756

No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675

No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676

No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702

No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003